REPORTS OF COMMITTEES ON PRIVATE BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar as follows:

Mr. PITTENGER: Committee on Claims. H. R. 5496. A bill for the relief of Cecile McLaughlin; with amendment (Rept. No. 1946). Referred to the Committee of the Whole House.

Mr. JENNINGS: Committee on Claims. H. R. 5658. A bill for the relief of James Warren; with amendment (Rept. No. 1947). Referred to the Committee of the Whole House.

Mr. KLEIN: Committee on Claims. H. R. 5854. A bill for the relief of Madeleine Hammett, Olive Hammett, Walter Young, the estate of Laura O'Malley Young, deceased, and the legal guardian of Laura Elizabeth Young; with amendment (Rept. No. 1948). Referred to the Committee of the Whole House.

Mr. JENNINGS: Committee on Claims. H. R. 5910. A bill for the relief of Randolph and Emma Treiber; with amendment (Rept. No. 1949). Referred to the Committee of the Whole House

Mr. JENNINGS: Committee on Claims. H R. 5966. A bill for the relief of Louis H. Deaver; without amendment (Rept. No. 1950). Referred to the Committee of the Whole House.

Mr. JENNINGS: Committee on Claims. H. R. 6365. A bill for the relief of Commander Cato D. Glover; with amendment (Rept. No. 1951). Referred to the Committee of the Whole House.

Mr. WEISS: Committee on Claims. H. R. 1540. A bill for the relief of Harry Tousey; with amendment (Rept. No. 1952). Referred to the Committee of the Whole House.

PUBLIC BILLS AND RESOLUTIONS

Under clause 3 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. DICKSTEIN:

H. R. 6858. A bill relating to the statues of certain natives and inhabitants of the Virgin Islands; to the Committee on Immigration and Naturalization.

By Mr. HENDRICKS:

H. R. 6859. A bill for the relief of dealers in certain articles or commodities rationed under authority of the United States; to the Committee on Banking and Currency.

H. R. 6860. A bill for the relief of dealers in certain articles or commodities rationed under authority of the United States; to the Committee on the Judiciary.

By Mr. BENDER:

H. R. 6861. A bill relating to the voting rights of persons in the land and naval forces of the United States; to the Committee on Military Affairs.

By Mr. SWEENEY:

H. R. 6867 (by request). A bill to amend title 39, United States Code; to the Committee on the Post Office and Post Roads.

By Mr. HOBBS:

H. J. Res. 298. Joint resolution to codify and emphasize existing rules and customs pertaining to the display and use of the flag of the United States; to the Committee on the Judiciary.

PRIVATE BILLS AND RESOLUTIONS

Under clause 1 of rule XXII, private bills and resolutions were introduced and severally referred as follows:

By Mr. BARRY:

H. R. 6862. A bill authorizing the naturalization of Thomas P. Prendergast; to the Committee on Immigration and Naturalization.

By Mr. LANE:

H. R. 6863. A bill for the relief of Thomas W. Dowd; to the Committee on Claims.

By Mr. MANSFIELD:

H. R. 6864. A bill for the relief of Mrs. Vola Stroud Pokluda; to the Committee on Claims.

By Mr. PITTENGER:

H. R. 6865. A bill for the relief of Andrew Stenman; to the Committee on Claims.

By Mr. SWEENEY:

H. R. 6866. A bill to confer jurisdiction on the Court of Claims to hear, determine, and render judgment upon the claim of the United States Parcel Post Building Co., of Cleveland, Ohio; to the Committee on Claims.

PETITIONS, ETC.

Under clause 1 of rule XXII, petitions and papers were laid on the Clerk's desk and referred as follows:

2612. By Mr. KRAMER: Petition of Walter C. Peterson, city clerk of Los Angeles, Calif., urging the United States Senators from California and the Members of the House of Representatives from California to exert every effort to resist or modify the crippling effect of House bills 6617 and 6750; to the Committee on Ways and Means.

2613. By Mr. GILLETTE: A letter from the Chamber of Commerce of Dushore, Pa., favoring the elimination of certain nondefense governmental agencies; to the Committee on Expenditures in the Executive Departments.

2614. By Mr. LYNCH: Resolution of the Legislature of the State of New York, requesting the Congress of the United States to effect any necessary changes in our laws and regulations between United States and Canada so that unnecessary restrictions may be removed and movement of persons and products facilitated for the purpose of promoting harmonious, efficient, and victorious prosecution of the war; to the Committee on Ways and Means.

2615. By Mr. ROLPH: Resolution of the Builders Exchange of San Francisco, Calif., adopted March 16, 1942, for the stepping up of war production; to the Committee on Military Affairs.

SENATE

FRIDAY, MARCH 27, 1942

(Legislative day of Thursday, March 5, 1942)

The Senate met at 12 o'clock noon, on the expiration of the recess.

The Chaplain, the Very Reverend ZeBarney T. Phillips, D. D., offered the following prayer:

O Thou whose Providence doth always make provision for us, if not according to our fancied wants, yet according to our inmost needs: Quicken and quiet the spirit in us for worship and for praise, and, from the sanctuary of Thy holiness, do Thou compose our thoughts and renew our strength. Unclose our inward ear for hearing, and do Thou give to us the earnestness of soul that has no time to waste on anything that furthers not a sense of duty to God and Country, for the establishment of righteous dealing among men and the nations of the world.

We bless Thee for the lives of self-denial all about us, for the experiences which bring to us their lessons, leaving us chastened and tempered to a wiser spirit, and if there be in our heart today a song of thankfulness, and mingled with the song a prayer of upward aspiration, do Thou in Thy mercy receive the song and answer Thou the prayer according to the Divine pleasure of Thy will; through Jesus Christ, our Lord. Amen.

THE JOURNAL

On request of Mr. BARKLEY, and by unanimous consent, the reading of the Journal of the proceedings of the calendar day Thursday, March 26, 1942, was dispensed with, and the Journal was approved.

MESSAGE FROM THE PRESIDENT

A message in writing from the President of the United States submitting several nominations in the Army was communicated to the Senate by Mr. Miller, one of his secretaries.

CALL OF THE ROLL

Mr. BARKLEY. I suggest the absence of a quorum.

The VICE PRESIDENT. The clerk will call the roll.

The Chief Clerk called the roll, and the following Senators answered to their names:

Aiken	Gillette	O'Mahoney
Andrews	Glass	Overton
Austin	Green	Pepper
Bailey	Guffey	Radcliffe
Ball	Gurney	Reed
Bankhead	Hayden	Reynolds
Barbour	Herring	Rosier
Barkley	Hill	Russell
Bone	Holman	Schwartz
Brewster	Hughes	Shipstead
Brooks	Johnson, Calif.	Smith
Brown	Johnson, Colo.	Spencer
Bulow	Kilgore	Stewart
Burton	La Follette	Taft
Butler	Langer	Thomas, Idaho
Byrd	Lee	Thomas, Okla.
Capper	Lucas	Thomas, Utah
Caraway	McCarran	Tobey
Chandler	McFarland	Truman
Chavez	McKellar	Tunnell
Clark, Idaho	McNary	Tydings
Clark, Mo.	Maloney	Vandenberg
Connally	Maybank	Van Nuys
Danaher	Mead	Wagner
Davis	Millikin	Walsh
Doxey	Murdock	Wheeler
Ellender	Murray	White
George	Nye	Wiley
Gerry	O'Daniel	Willis

Mr. HILL. I announce that the Senator from New Mexico [Mr. HATCH] is absent from the Senate because of illness.

The Senator from California [Mr. DOWNEY] and the Senator from Washington [Mr. WALLGREN] are holding hearings in Western States on matters pertaining to national defense.

The Senator from Mississippi [Mr. BILBO], the Senator from Nevada [Mr. BUNKER], and the Senator from New Jersey [Mr. SMATHERS] are necessarily absent.

Mr. McNARY. I announce that the Senator from Nebraska [Mr. NORRIS] is absent because of illness.

Mr. AUSTIN. The Senator from New Hampshire [Mr. BRIDGES] is absent as a result of an injury and illness.

The Senator from Massachusetts [Mr. LODGE] is necessarily absent.

The VICE PRESIDENT. Eighty-seven Senators have answered to their names. A quorum is present.

EXECUTIVE COMMUNICATIONS

The VICE PRESIDENT laid before the Senate the following communications, which were referred as indicated:

SUPPLEMENTAL ESTIMATE OF APPROPRIATION FOR THE NAVY DEPARTMENT (S. DOC. NO. 189)

A communication from the President of the United States, transmitting a supplemental estimate of appropriation for the Navy Department and naval service for the fiscal year ending June 30, 1942, to remain available until June 30, 1943, amounting to $50,000 (with an accompanying paper); to the Committee on Appropriations and ordered to be printed.

SUPPLEMENTAL ESTIMATES OF APPROPRIATIONS, NATIONAL ADVISORY COMMITTEE FOR AERONAUTICS (S. DOC. NO. 190)

A communication from the President of the United States, transmitting a supplemental estimate of appropriation, fiscal year 1942, amounting to $3,500,000, and a supplemental estimate of appropriation for the fiscal year ending June 30, 1943, amounting to $4,071,000 in the form of an amendment to the Budget for that fiscal year, for the National Advisory Committee for Aeronautics, for continuing the construction and equipment of the Aircraft Engine Research Laboratory, Cleveland, Ohio (with an accompanying paper); to the Committee on Appropriations and ordered to be printed.

PETITIONS AND MEMORIALS

Petitions, etc., were laid before the Senate, or presented, and referred as indicated:

By the VICE PRESIDENT:

The petition of the Presbyterian Ministerial Association of Philadelphia and vicinity, Pennsylvania, praying for the enactment of legislation to prohibit the manufacture and sale of intoxicating liquors and to provide for the use of employees of the liquor business in the war industries, also to prohibit the sale of rubber tires or accessories to the liquor industry for liquor deliveries when such tires, etc., may be denied for the use of grocery deliveries; to the Committee on the Judiciary.

By Mr. TYDINGS:

The petition of members of the North Avenue United Presbyterian Church of Baltimore, Md., praying for the prompt enactment of the bill (S. 860) to provide for the common defense in relation to the sale of alcoholic liquors to the members of the land and naval forces of the United States and to provide for the suppression of vice in the vicinity of military camps and naval establishments; ordered to lie on the table.

By Mr. CAPPER:

A letter in the nature of a petition from the Kansas State Federation of Labor, Coffeyville, Kans., signed by George A. Maiden, secretary, praying for the enactment of Senate bill 2329, for the relief of civilian employees previously engaged in construction work at Wake and Guam Islands in the Pacific Ocean; to the Committee on Naval Affairs.

A petition of members of the congregation of the Methodist Church of Vernon, Kans., praying for the prompt enactment of the bill (S. 860) to provide for the common defense in relation to the sale of alcoholic liquors to the members of the land and naval forces of the United States and to provide for the suppression of vice in the vicinity of military camps and naval establishments; ordered to lie on the table.

PROHIBITION OF LIQUOR SALES AND SUPPRESSION OF VICE AROUND MILITARY CAMPS—PETITION

Mr. AUSTIN. Mr. President, I ask consent at this time to present for the RECORD a petition from sundry citizens of Vergennes, Vt., headed by Katherine M. Waterman, with respect to Senate bill 860, generally known as the Sheppard bill, and praying for the enactment of that proposed legislation. I request that the petition may be appropriately disposed of.

The VICE PRESIDENT. Without objection, the petition presented by the Senator from Vermont will be received and lie on the table.

STATEMENT RELATIVE TO RESOLUTIONS OF LOYALTY BY AMERICANS OF ITALIAN ORIGIN

Mr. MEAD. Mr. President, I ask unanimous consent to have inserted in the RECORD at this point in my remarks a statement containing references to certain resolutions pledging loyalty on the part of Italian-American people.

There being no objection, the statement was ordered to be printed in the RECORD, as follows:

RESOLUTIONS OF LOYALTY

Immediately after the dastardly attack upon Pearl Harbor numerous resolutions were adopted by fraternal and labor organizations whose membership is composed of Americans of Italian origin. These resolutions are splendid manifestations of the patriotism, loyalty, and wholehearted support of such organizations, as well as its members, to the President and the Government of the United States.

I wish to take this opportunity of summarizing a few of the very many resolutions which have been brought to my attention in these last few weeks, which I believe are of note to the members of this body;

Among the first, the order, Sons of Italy, through its supreme council meeting in extraordinary session in the city of Philadelphia, cradle of American liberty, recommended that each of its member lodges subscribe and pledge its available funds for the ultimate purchase of $10,000,000 worth of Defense bonds.

In a letter to President Roosevelt all of the executives, editors, administrative staff, and employees of the newspapers Il Progresso Italo-Americano, and Corriere D'America, edited by Generoso Pope, reaffirmed their loyalty and pledged their fortunes and lives to preserve and secure the United States. By the voluntary pay-roll allotment plan Mr. Pope's industrial and journalistic enterprises have already purchased $50,000 worth of Defense bonds.

In addition, all the other Italian-American newspapers are conducting an extensive campaign for the purchase of millions of dollars worth of additional bonds by the various Italian-American organizations throughout the United States.

On February 8 of this year the newspaper Il Progresso Italo-Americano already published the names of those social groups and clubs and industrial organizations, whose membership is composed of Americans of Italian origin, which had purchased a total of approximately one-half million dollars' worth of Defense bonds. This drive is still being conducted, and everywhere Americans of Italian extraction are unselfishly responding.

The spirit of loyalty of these people to the President and Government of the United States is proven beyond doubt in the following excerpts from some of the many resolutions adopted by their clubs and organizations:

The Alliance Clubs of North America at a regular meeting of the executive committee resolved that its 30,000 members "strongly stand ever ready for duty and call." Figli D'Italia, Santa Barbara, Calif., resolved, "We swear to offer ourselves, our organization, and our resources to the national defense." Italian Pharmaceutical Association of the State of New York resolved, "We have decided also to individually and collectively give our entire resources and our entire energies to bring about a quick and glorious victory to our Nation." Italian Union, Inc., resolved, "We place everything that we have at your disposal." Local 48, Italian Cloak, Suit, Reefer, and Shirt Makers Union, with a membership of 10,000, resolved, "We Americans of Italian origin are ready to fight against anyone to safeguard the integrity and the democracy of the United States of America." Italian Barbers Association resolved to "serve America" and "consecrate their sons" to the Nation. The Excavators and Building Laborers Union, Local 731, resolved to "cooperate with all their energies toward the national defense" and to buy the "greatest possible number" of Defense stamps and bonds. Logge Italo-Americane Dell'Ordine Operaio Internazionale resolved, "In this solemn hour" to "assume every duty and meet every sacrifice for the defense" of this country. "Death to nazi-ism and fascism. Long live the cause of democracy and independence."

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. WALSH, from the Committee on Naval Affairs:

H. R. 4869. A bill to provide for longevity credit for enlisted men of the Naval and Marine Corps Reserve, and for other purposes; with amendments (Rept. No. 1228).

By Mr. THOMAS of Oklahoma, from the Committee on Indian Affairs:

S. J. Res 68. Joint resolution for the relief of the heirs of Fannie Ellis White; with amendments (Rept. No. 1229).

BILLS INTRODUCED

Bills were introduced, read the first time, and, by unanimous consent, the second time, and referred as follows:

By Mr McKELLAR:

S. 2413. A bill for the relief of Vodie Jackson (with accompanying papers); to the Committee on Claims.

By Mr. MURRAY:

S. 2414. A bill providing for the suspension of annual assessment work on mining claims held by location in the United States; to the Committee on Mines and Mining.

WOMEN'S ARMY AUXILIARY CORPS—AMENDMENT

Mr. BARBOUR submitted an amendment intended to be proposed by him to the bill (H. R. 6293) to establish a Women's Army Auxiliary Corps for service with the Army of the United States, which was ordered to lie on the table and to be printed.

TERMINATION OF NATIONAL YOUTH ADMINISTRATION AND CIVILIAN CONSERVATION CORPS—AMENDMENT

Mr. McKELLAR submitted an amendment intended to be proposed by him to the bill (S. 2295) to provide for the termination of the National Youth Administration and the Civilian Conservation Corps, which was referred to the Committee on Education and Labor and ordered to be printed.

REVIEW OF REPORTS ON THE UMPQUA HARBOR AND RIVER, OREG.

Mr. BAILEY presented a letter from the Secretary of War, transmitting a report dated December 19, 1941, from the Chief of Army Engineers, together with papers and an illustration, on a review

of the reports on the Umpqua Harbor and River, Oreg., with a view to the improvement of Winchester Bay, Oreg., which, with the accompanying papers, was referred to the Committee on Commerce and ordered to be printed with an illustration.

LEADERSHIP IN THE WAR EFFORT

Mr. HOLMAN. Mr. President, on March 20, 1942, there appeared in the Astorian-Budget, a newspaper published at Astoria, Oreg., an editorial entitled "Mr. President, Lead Us All," which so well expresses my own thought that I should like to have it incorporated in the body of the RECORD as a part of my remarks.

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

[From the Astorian Budget of March 20, 1942]

MR. PRESIDENT, LEAD US ALL

Mr. President, we are seeking the light, the light of guidance. We want to know what to believe, when to believe, how to believe.

We have been laboring under the deep conviction that our country stands at the crossroads and that the future of our Nation and of the world depends upon the route we choose and the way we travel it.

We believe you have pointed the true path to follow but we think many people are missing the path and many more will miss it through their own blindness or through bewilderment and confusion caused by others.

We believe the great need is a leadership that will dispel alike apathy and doubt, a stout and stern leadership, a clear and consistent leadership, a leadership with a clarion trumpet and a "terrible, swift sword" that will arouse all to a righteous wrath and unify them into a single-purposed army marching to its goal, heedless of all else.

Mr. President, the time has come when pointing the way will no longer suffice. We must be led along it.

We say this because we honestly feel that you have not yet brought yourself to give us that type of leadership in this greatest of all crises. When you hesitate and waver, it is inevitable that there will be many stragglers in the ranks.

Mr. President, we have just read where you are opposing any legislation that will in any way take away any of the gains made by labor during our previous administrations. We have read where your war-production chief, Donald Nelson, and your Secretary of Labor, Madam Perkins, have appeared before the Senate Naval Affairs Committee to oppose the bill which would suspend the 40-hour week for the duration of the war, which would outlaw the closed shop for the period and which would limit profits on war contracts to 6 percent.

We have just read where high Army, Navy, and maritime officials have unanimously agreed with you that restrictive labor laws are not needed now. They are reported as telling the committee that no serious labor situation exists now.

Mr. President, it doesn't make sense to us. It doesn't square with what you and these same men have told us before. There is inconsistency some place and that inconsistency leads to confusion and worse. It leads to a serious interference with the single-minded devotion to the all-out effort to win this war.

Mr. President, you have told us repeatedly that production will win this war, that we must turn our mills and factories from the manufacture of peacetime goods to the making of the implements of war. You have set goals for plane and tank and ship production of such proportions that will tax our manpower and our machines to the maximum limits, and you have urged greater and greater effort, more and more speed.

Mr. President, you have called upon us all to sacrifice, to give up our tires and cars, to forego many of the comforts to which we have been accustomed, to tune our standards of living to the one great purpose of victory. You have asked us to forget politics, to quit thinking in terms of selfish gain or group advantage. You have asked us to pay more and more taxes to provide all that must be provided if we are to win.

Mr. President, these exhortations do not coincide with what you now tell Congress, that there is no need for labor to sacrifice any of the gains it has made, that there is no need to suspend the 40-hour week.

Mr. President, it was only a few short days ago that Mr. Nelson, your chief of war production, made a Nation-wide appeal for vastly increased industrial output on a 24-hour, 7-day, 168-hour-a-week basis, the same Mr. Nelson who appeared for you before the congressional committee to oppose suspension of the 40-hour week.

Mr. President, Mr. Nelson is your appointee and so are the high-ranking Army, Navy, and maritime officials who testified that no serious labor situation exists, and yet from these same sources have come numerous protests against the interruption of production by strikes, of statements of the man-hours lost and their meaning in terms of ships, planes, and tanks.

Mr. President, we say again it doesn't make sense. It is not consistent. What and when are we who want to support your all-out program to believe?

You say and they say that there is no legislative restriction against working more than 40 hours, only that time and a half must be paid for overtime or double time in some instances. Where is the sacrifice in this? It is not imposed upon those who do this work but upon the taxpayers who must pay the excessive costs to which this contributes.

Mr. President, doesn't it disregard the fact that hundreds of thousands of young men, who once had well-paid jobs and who were protected by the Wages and Hours Act, have sacrificed those jobs and that security to go into the armed forces where there is a meager limitation upon pay but no limitation at all upon the hours of training or fighting? And these men must be ready to sacrifice their lives if need be. There is no 40-hour week or overtime pay at Bataan, and there will be none in Australia or on any of our other battle fronts.

Mr. President, the mighty effort to win this war of the world cannot be served by policies of gross inequity and discrimination, and neither can national unity be secured and preserved by such. Sacrifice cannot be for some and spared for others.

Mr. President, turn your eyes to England where long ago the gains of labor and of all other groups were sacrificed to the war of preservation. Turn your eyes to Australia, which has led the world in liberal legislation and where now workers and all others are conscripted for the prosecution of the life-and-death struggle.

Mr. President, you cannot travel two roads any more than you can serve two masters. You cannot pursue two great objectives at the same time and attain both. You cannot have your cake and eat it, too. Your great social program for the underprivileged was your shining target during your previous administrations. It was the product of peacetimes, which are no longer with us and when we have been led to believe and do believe that all else must be subordinated to the one great goal of victory. Mr. President, you are at the crossroads of your career and you must choose your route and lead forward.

Mr. President, we wonder why you hesitate. Is it possible that you still think the people would not be with you? Are you so poorly advised in Washington that you do not know that the great majority are ready and eager to follow you and support you on a course that calls for hardship and sacrifice for everyone? Why else do you think Congress repeatedly brings up these bills? They are but responding to the demands from home.

Mr. President, do you fear that labor will not follow you? Do you think that the working man and woman are less capable of willing sacrifice than others? You do not know them in their average if you doubt them. Their patriotic impulses are as strong as any others. They, too, have sons in uniform. They are Americans first and ready to share in the common effort and the common sacrifice. Make no mistake about that.

Are you not confusing, Mr. President, the average worker with the labor leaders who sit close to your office and who pretend to speak for many millions, those who would take advantage of a national crisis to entrench themselves, seeking selfish gains at the expense of the country? You do not have to fear them; if you rise to a flaming and trenchant leadership, your followers will leave them without following.

Mr. President, we appeal to you for such a leadership in a decision that will dissolve all doubts and misgivings, that will unify all citizens in the spirit of sacrifice for the prosecution of a mighty effort to a victory without which there will be no government, no democracy, no freedom, no civilization such as we have known and cherished.

LABOR AND THE CONDUCT OF THE WAR—ADDRESS BY DANIEL J. TOBIN

[Mr. BARKLEY asked and obtained leave to have printed in the RECORD a radio address relative to labor and the conduct of the war delivered by Daniel J. Tobin, president of the International Brotherhood of Teamsters, on March 23, 1942, which appears in the Appendix.]

THE FARMERS AND THE WAR EFFORT—ADDRESS BY M. W. THATCHER

[Mr. MURRAY asked and obtained leave to have printed in the RECORD a radio address delivered during the National Farm and Home Hour by Mr. M. W. Thatcher, chairman of the National Farmers' Union legislative committee, which appears in the Appendix.]

WAR PROFITS AND WAGES—ARTICLE BY FRANK R. KENT

[Mr. CLARK of Missouri asked and obtained leave to have printed in the RECORD an article by Frank R. Kent, published in the Washington Evening Star of March 27, 1942, relative to war profits and wages, which appears in the Appendix.]

LABOR AND WAR PRODUCTION

[Mr. GUFFEY asked and obtained leave to have printed in the RECORD two articles from PM for March 22, 1942, entitled "Nail That Lie About Labor," which appear in the Appendix.]

POLITICS AND THE SILVER MONTHS—ARTICLE BY VARDIS FISHER

[Mr. THOMAS of Idaho asked and obtained leave to have printed in the RECORD an article from the Idaho Sunday Statesman for March 22, 1942, by Vardis Fisher, entitled "Politics and the Silver Months," which appears in the Appendix.]

PATRIOTS ALL—EDITORIAL FROM DETROIT FREE PRESS

[Mr. BROWN asked and obtained leave to have printed in the RECORD an editorial from the Detroit Free Press entitled "Patriots All," which appears in the Appendix.]

MESSAGE FROM THE HOUSE

A message from the House of Representatives, by Mr. Swanson, one of its

clerks, announced that the House had agreed to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H. R. 6005) to authorize cases under the Expediting Act of February 11, 1903, to be heard and determined by courts constituted in the same manner as courts constituted to hear and determine cases involving the constitutionality of acts of Congress.

The message also announced that the House had disagreed to the amendments of the Senate to the bill (H. R. 6483) to amend the act entitled "An act to expedite the provision of housing in connection with national defense, and for other purposes," approved October 14, 1940, as amended; asked a conference with the Senate on the disagreeing votes of the two Houses thereon, and that Mr. LANHAM, Mr. BELL, and Mr. HOLMES were appointed managers on the part of the House at the conference.

ENROLLED BILL SIGNED

The message further announced that the Speaker had affixed his signature to the enrolled bill (H. R. 6691) to increase the debt limit of the United States, to further amend the Second Liberty Bond Act, and for other purposes, and it was signed by the Vice President.

SENATOR FROM NORTH DAKOTA

The Senate resumed consideration of the resolution (S. Res. 220) declaring WILLIAM LANGER not entitled to be a United States Senator from the State of North Dakota.

Mr. McNARY. Mr. President, I feel that I may be obtruding upon the time that is supposed to be allotted to the able junior Senator from West Virginia [Mr. ROSIER], who desired to speak first this morning. I only speak at this time because of his absence. But in view of his detention before a committee, I shall speak within the allotted time. Perforce I must, and being somewhat responsible for the limitation on the time, I, of course, shall gracefully yield to the injunction of the order.

Mr. President, for a number of years I have been interested in the rules and precedents of the Senate and the Constitution, which have furnished the modes for its guidance and government. I have very definite views regarding the legal features of the case before us, and shall attempt to address myself only to the legal phases.

Not being a member of the Committee on Privileges and Elections, I do not presume to be as familiar with the factual data as are the members of the committee. However, I have read the discussions in the briefs of the respondent and those filed by the committee, and also listened as attentively, probably, as any other Member of the Senate to the oral arguments which have been made during the last 3 weeks.

I have no personal interest in this case. I feel most impersonal about it, so far as the able Senator from North Dakota is concerned. I would assume this attitude if the same situation arose with respect to a Senator on the Democratic side of the aisle.

I may say at this juncture that some 16 years ago I was a member of a special committee in the Vare and Smith cases, and I was the only Republican on the committee who reported adversely to the position for which those men contended, namely, a seat in the United States Senate. At that time I showed no partisanship, and voted against my Republican colleague on the committee, and today I am found in the attitude of arguing, briefly, in defense of one who seeks to retain his seat in this body.

In this matter I am not influenced at all by personal feeling. In fact, I never knew the Senator whose seat is now challenged until he came to the Senate. My acquaintance is most casual, although he has conferred with me a few times on the matter of procedure, but I have not gone over with him the case as it is involved in the facts brought out before the committee or told to those who investigated the case.

Mr. President, it should seem very certain to all of us, I think, that we have not in this body the machinery, the equipment, or the tools to try a case of this kind. I do not censure the committee; I think, on the other hand, it has done its work as well as it could have been done; but we are handicapped by lack of those requisites which are essential in order fairly, completely, and adequately to try a case in which a criminal charge, or a semicriminal charge, or a quasi criminal charge is involved.

Investigators were sent into North Dakota to investigate the charges which were brought here on a petition. Some of the witnesses appeared before the committee, but no rules of evidence were involved. None has been since the case came before this body. I recall an experience I had a few years ago when we had on trial a district judge for impeachment. It is interesting to note that in matters of impeachment all the machinery necessary to obtain the facts, the real evidential facts, is provided for. The question of the admissibility and the competency of evidence is well regulated by the procedure. I recall that two lawyers appeared here in behalf of the judge, and two on behalf of the managers on the part of the House. If a question asked was considered incompetent, or was not passed upon by the Presiding Officer adequately or with fairness, an appeal could be made to the body of the Senate. In that way an impeachment proceeding was tried very much as a case in court is tried. Something must be done to assure a complete, fair, and total trial in a case similar to the one before us. We have done the best we could, but at the best it is a poor job.

I think I might recall to the Senate the attitude of the Senate of the United States in an early case—I think it was in 1795—when a similar situation arose in the Senate. This body at that time recognized the want of equipment properly to try a case, and rendered a verdict which I think should be the law and practice today. Probably this is the only case in which I shall produce a book to support my position, and I am very much pleased to review that case because of the philosophy involved and enunciated in the case.

Most of the cases which have come before the Senate have involved the legality of elections, and nearly all of them have been decided on that question. Very few of those whose cases have been acted upon by the Senate have been tried for crimes committed prior to the time the Senator has taken his seat. I recall only two exceptions. One is the case against Senator Thomas, of Maryland, in 1867; the other, a case much older, in 1805, brought against Senator Smith, of Ohio. In the latter case the charge was brought because of alleged conspiracy in connection with the Aaron Burr case. In the Thomas case the crime charged was assisting his son to join the military forces of the Confederacy. In both cases the Senate seized jurisdiction and tried the cases here, but the trials took place before the committees, and not before the Senate, and presented very simple questions of fact.

The case I have in mind which has come to us with almost uninterrupted authority is the case of Humphrey Marshall, found in the sixth volume of Compilation of Senate Election Cases by Hinds, page 168. In that case, Mr. Marshall was seated in the Senate and, after he had been seated some 18 months, a petition was presented to the Senate by the Governor of the State of Kentucky and by the legislature of that State, charging that during the time of a proceeding in chancery Marshall had committed a gross fraud and perjury. The matter was referred, as in the present case, to the Senate Committee on Privileges and Elections, and this was the finding, first of the committee, and then confirmed by the Senate, which I think should be the logic and procedure today. I read from page 171 a brief statement:

They think—

Referring to the report of the committee which was acted upon by the Senate—

that in a case of this kind no person can be held to answer for an infamous crime unless on a presentment or indictment of a grand jury, and that in all such prosecutions the accused ought to be tried by an impartial jury of the State and district wherein the crime shall have been committed. If, in the present case, the party has been guilty in the manner suggested, no reason has been alleged by the memorialists why he has not long since been tried in the State and district where he committed the offense. Until he is legally convicted, the principles of the Constitution and of the common law concur in presuming that he is innocent. And the committee are compelled, by a sense of justice, to declare that in their opinion the presumption in favor of Mr. Marshall is not diminished by the recriminating publications, which manifest strong resentment against him.

And they are also of opinion that, as the Constitution does not give jurisdiction to the Senate, the consent of the party cannot give it; and that therefore the said memorial ought to be dismissed.

That was the report of the committee, and it was adopted overwhelmingly by the Senate. That rule has an almost unbroken record in the Senate.

Now here is this case today. It appears from the CONGRESSIONAL RECORD that the

second petition filed by the attorneys for 11 citizens of North Dakota says:

> Petitioners further allege that for, to wit, the past 20 years, respondent's public and private life has been of such character that he has been repeatedly suspected and accused of conduct involving moral turpitude.

And then it sets forth the specifications which we have had presented here.

Mr. President, in spite of the rule to which I have referred, there has been no effort made by the good people of North Dakota, acting through their county prosecutors or through the grand juries, to indict or try Senator LANGER for any of these charges whatsoever. I think it is the manifest and plain obligation upon the part of the people of North Dakota, if they knew of these irregularities, and what some may be pleased to call crimes, either misdemeanors or felonies, to have tried Mr. LANGER in the district and the county where the crime was committed, and before a jury of his peers. Failing in that, refusing to assume that responsibility, they are indeed asking too much, after Senator LANGER has been successful at the polls, and, without being tried by a jury, without even an opportunity fairly to try the case, to attempt to impose that obligation upon the Senate.

Mr. President, there is no rule of law more fair, more logical, or that has the sanction of more years, than the one I invoke. It is found in the earliest jurisprudence which we find in the textbooks. It was codified in the early Gregorian and Justinian Codes. It is found in the common law of England and the statutory law of the United States. It is that a man who commits a crime or is accused of the commission of a crime, is entitled to be tried by his peers in the county or the district where the crime was committed. I cannot too strongly emphasize the obligation which rested upon those who do not like Senator LANGER and mistrust his honor to bring the charges they make in the county where the crimes were alleged to have been committed, and have them tried there—the charges which they now have brought here, and ask us to try, 20 years, 15 years, 10 years, 1 year after their commission.

Mr. President, if when this case had come here the philosophy of which I speak had been invoked, the case would not have been here occupying 3 weeks of our time in these stressful and distressing hours of the history of our country. I think it is the duty of the Senate in the future, when a Senator comes here under suspicion, under the charge of the commission of a series of acts which some are pleased to call criminal—some characterize them in milder words, as involving moral turpitude—to say to the people of his State, "Take this case back and try this gentleman as is provided for in the long line of precedents and in the theory of the common law of this country, and of England, and France, and the nations from which this wholesome rule has sprung."

I make one exception in this case in the greatest of fairness. We have seized jurisdiction of this case, and I am not complaining about it. It has been the practice for years, when a petition or a complaint has come to the Senate, to refer it to the committee having jurisdiction, and, perhaps, in this case the committee, without knowing and without considering the real philosophy we had followed for many years in almost unbroken practice, started to try this case as though the matters in question had taken place within our own jurisdiction.

I make some modification also in the spirit of the greatest of frankness. I am assuming that all the matters which are alleged by the petitioners in this instance, which have carried such weight before the committee, were known to the people of North Dakota.

There may be some conflict in the testimony on that point, but I am assuming that the matters were known to them, that the charges which we have been considering had been circulated and scattered through the State of North Dakota. There is some testimony to indicate that a few of them were not known. But the very statement made under oath by the petitioners would indicate that those matters were suspected and known for the past 20 years.

I would say that if a similar case should be brought to the Senate, and this rule should be applied, and later it should develop that the people did not know the facts with respect to the commission of an infamous crime, then it would be our duty, through our committee having jurisdiction, as well as the Senate itself, to try that issue. But how many issues of that kind are involved in this case? Scarcely any, if any.

Mr. President, I wish to say a few more words; time is fleeting, and I must proceed. I think the responsibility with respect to men who are sent to the Senate rests largely upon the people of the States who elect them, and if they are guilty of laches or indifference or negligence, the complainants should not come here, after they are unable to defeat a Senator at the polls, and ask us to right their wrong.

Mr. President—and I say a final word on that matter—Mr. LANGER has been Governor of his State on two occasions. He was elected to the Senate. He has been prosecutor of his State. In looking over the record a few days ago in the Library, I found that there is a very broad definition of crime, or any disobedience on the part of the Governor; and if these things were alleged against Mr. LANGER when he was Governor, a statute existed in North Dakota, the application of which would have resulted in bringing upon him dishonor and conviction if he had been guilty. There is no evidence here that any of the good people of North Dakota in any way complained to a district attorney or to a grand jury, or made any effort whatsoever to bring Senator LANGER within the toils of the law. Nothing was done until he was successfully elected to the Senate, and then 8 or 10 petitioners rushed here with a petition asking us to do something which they had failed to do. In view of the experience we have had, it is my opinion that in the future the Senate should not be again imposed upon in any such fashion.

I have given some thought to the question of what the Constitution prescribes in the matter of qualifications. I may say that it is a recent discovery on my part. Sixteen years ago, when the Smith case was before the Senate, I was one of the members of the special committee. I was one of two Republicans. My very good friend, the exceedingly able Senator from Wisconsin [Mr. LA FOLLETTE] represented the Progressives, and there were two Democrats.

At that time I came to the conclusion that the Constitution prescribed fully, completely, and finally the qualifications which entitle one to a seat in this body. The question was discussed over and over again, and the committee brought in a verdict against seating Frank Smith, after he had been successful in the primary, because he had vitiated the election by reason of gross fraud when he was commissioner of utilities in the State of Illinois in accepting $125,000 from Mr. Insull, who had properties in that State worth in excess of half a billion dollars. He had also expended the sum of $450,000 in the campaign.

Bear in mind, Mr. President, that a short time before that, in the Newberry case, with which most Senators are conversant, the Senate established a rule that the expenditure of $198,000 in a primary campaign was excessive and contrary to sound public policy. More than twice that amount was spent in Mr. Smith's campaign. Therefore, Frank Smith was not permitted to occupy a seat in this body because he did not qualify in the manner prescribed by the Constitution of the United States. Nearly all the cases which have been decided have turned on that point.

Mr. President, there are three constitutional provisions relating to this matter. They are all more or less interrelated and must be construed together. The first one is contained in article I, section 2 of the Constitution, which provides that—

> No person shall be a Senator who has not attained the age of 30 years and been 9 years a citizen of the United States, and who shall not when elected be an inhabitant of that State for which he shall be chosen.

That is section 2. Article I, section 3, provides:

> Each House may determine the rules of its proceedings, punish its Members for disorderly behaviors, and, with the concurrence of two-thirds, expel a Member.

Article I, section 5, provides:

> Each House shall be the judge of the election, returns, and qualifications of its own Members.

As I understand, those who seek to remove Senator LANGER from the Senate claim that the qualifications of a Senator are not wholly specified by the Constitution, and that therefore he may be removed by a majority vote. I contend that in all parliamentary bodies a majority vote is sufficient for the body to function and express its authority unless there is some law to the contrary.

When a Senator-elect comes here under age, with not sufficient inhabitancy, or lacking the citizenship qualification, or if he has committed a fraud in the election, or has committed acts of treason to his country, by majority vote we can deny him a seat in the Senate by reason of that fact if it appears, as it

did appear in the Smith case. If he has all the constitutional qualifications and takes his seat he can be removed only by a two-thirds vote of the Senate. Upon that question I have no doubt. To that theory I find little opposition from the text writers, in the precedents of the Senate, or in the adjudicated cases.

The only exception I recall, when a Senator's seat was taken away from him by exclusion, was the Thomas case in 1866, when Thomas was excluded. That is the only exception of which I know. In that case Thomas was convicted of aiding, encouraging, and abetting his son in joining the military forces of the Confederacy.

At that time Mr. Edmunds, the great lawyer from Vermont, took the position that additional qualifications could be added to those prescribed by the Constitution. An additional qualification—namely, the test oath—had been on the statute books for 4 years. I referred to it briefly yesterday. The test oath went to the loyalty of the Senator who was taking the oath. As a result of that discussion, after argument by the great Reverdy Johnson, one of the greatest lawyers who ever sat in this body, Mr. Fessenden, of Maine, and Mr. Sumner, of Massachusetts, the test oath was abandoned as a qualification, and Thomas was thrown out on the general principle that he was a sympathizer with the South. That is the only case I find in which a Senator was excluded for a crime committed before he became a Member of the Senate.

There was another case. I refer to the case of Senator John Smith, from Ohio, who was accused of conspiracy with Aaron Burr. He was not expelled, though an effort was made to expel him. That case was an exception to the rule which I stated a few moments ago.

Mr. President, the reasons why a two-thirds majority is necessary to expel a Senator are very evident to me. If we read the great debates on the Constitution, we find that when the States joined the Confederacy they were jealous of their rights. They did not want to permit a Senator to be expelled by a mere majority. So it was plainly written in the Constitution that a two-thirds vote is necessary to expel.

The word "qualifications" is used twice in the Constitution. That is what those who are trying to exclude Senator LANGER rely upon. However, the word "qualifications," as used in connection with elections, is related to the definition which is given in the statute. As a rule of statutory construction, when a general word such as "qualifications" is used, and in some other place it is defined, the definition is exclusive, and no other can be added.

It is also said that if the crime had been committed before Senator LANGER'S election, only a majority would be required to exclude him, whereas if it were committed after his election, while he was a Member, a two-thirds vote would be required. How ridiculous that is. Time is the only element in that theory. Those who advance the theory forget that the question is the commission of the crime. A criminal act is just as much a crime if it is committed before a man is a Senator as it is if committed after he becomes a Senator. I challenge anyone to produce any authority to support the theory which is advanced. Mr. Tayler, who was the attorney opposing Mr. Smoot, made that declaration but was denounced by the great lawyers of the Senate. It is like saying that if a man commits arson before he is married, a jury of 9 can convict him, but if he commits it after he is married a jury of 12 is required to convict him. There is no difference in the act itself. It is a crime in either event. The only difference is that of time; and time does not in any way define an act.

Mr. President, there is much that might be said, but I am the victim of my own proposal of yesterday. Perhaps I have had sufficient time to make clear my own views, though I had some other questions which I should like to have discussed more at length.

Senator LANGER comes here with all the presumptions of innocence in his favor. He is accused of a series of acts which are said to involve moral turpitude. If moral turpitude is a crime, and if he is guilty of moral turpitude, it was not committed before he became a Member. It is a continuing crime, as was said in the Smoot case. If moral turpitude is a crime, and he is guilty, he is a criminal today; he is in bad odor today. Turpitude means baseness of character. One guilty of moral turpitude is bereft of honor. The theory is that moral turpitude is a moral contagion which may be transmissible to those with whom he comes in contact in the Senate. If moral turpitude exists, it continues up to the present time.

Mr. President, I believe that my statement meets every contention of those who are opposing Senator LANGER at this time.

The PRESIDING OFFICER (Mr. MCFARLAND in the chair). The question is on agreeing to the amendment offered by the Senator from Louisiana [Mr. OVERTON], as modified, in the nature of a substitute for the amendment of the Senator from Rhode Island [Mr. GREEN] to Senate Resolution No. 220.

Mr. CONNALLY. Mr. President, I had understood that the Senator from West Virginia [Mr. ROSIER] desired to address the Senate.

Mr. O'MAHONEY. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk called the roll, and the following Senators answered to their names:

Aiken	Chandler	Holman
Andrews	Chavez	Hughes
Austin	Clark, Idaho	Johnson, Calif.
Bailey	Clark, Mo.	Johnson, Colo.
Ball	Connally	Kilgore
Bankhead	Danaher	La Follette
Barbour	Davis	Langer
Barkley	Doxey	Lee
Bone	Ellender	Lucas
Brewster	George	McCarran
Brooks	Gerry	McFarland
Brown	Glass	McKellar
Bulow	Green	McNary
Burton	Guffey	Maloney
Butler	Gurney	Maybank
Byrd	Hayden	Mead
Capper	Herring	Millikin
Caraway	Hill	Murdock
Murray	Russell	Truman
Nye	Schwartz	Tunnell
O'Daniel	Shipstead	Tydings
O'Mahoney	Smith	Vandenberg
Overton	Spencer	Van Nuys
Gillette	Stewart	Wagner
Pepper	Taft	Walsh
Radcliffe	Thomas, Idaho	Wheeler
Reed	Thomas, Okla.	White
Reynolds	Thomas, Utah	Wiley
Rosier	Tobey	Willis

The PRESIDING OFFICER. Eighty-seven Senators having answered to their names, a quorum is present.

Mr. VANDENBERG. Mr. President, inasmuch as I have no intention of speaking on the main issue, I should like to use my time briefly to see if we can clarify the pending question. I am frank to say that I am one of those who wish to assert that a two-thirds vote is required to eliminate the Senator from North Dakota; but it seems to me that in the form in which the pending amendment is presented I shall also be required at least by implication to vote that the Senate has no jurisdiction over any qualifications except those named in the resolution. I should like, for my own information, to ask my able friend and colleague, the Senator from Oregon, what he has to say in respect to that interpretation of the Overton amendment.

Mr. MCNARY. Mr. President, I always desire to be courteous and to give my best judgment on a matter of the kind, particularly when the question is propounded by the able Senator from Michigan. I did not like the resolution as proposed by the committee; I did not think that the first clause met the situation at all. It has been changed until I think it just about presents the question whether a two-thirds vote or a majority vote is required. I had in mind the form used in the Smoot case, which after the word "Resolved", inserted the words "two-thirds of the Senate concurring", thus raising the question without specification.

The objection I have to the Overton proposal is about the same as that which the Senator from Michigan has. It attempts to give a blueprint of what are the qualifications which must be possessed by a Senator-elect who comes here, and the possession of which entitles him to a seat. I do not think the Senate should foreclose itself in the event there should be future action by the States amending the Constitution or should specify the qualifications as of today I stated very frankly to the able Senator from Louisiana that I thought there should be a modification of his amendment so that the vote would come directly on the question whether it takes a majority vote or a two-thirds vote, without any blueprint or specifications.

Does that answer the Senator's question?

Mr. VANDENBERG. Yes. Now I ask the Senator from Louisiana whether it is not possible to simplify the issue so that those of us who wish to record ourselves on that point can do so without any involvement or implication in any other phase of the question.

Mr. OVERTON. Mr. President, as I have understood the argument made in this case by those who are opposed to the pending resolution, insofar as that argu-

ment dealt with the constitutional authority of the Senate, it is this: That the Senate has the authority by a majority vote to exclude a Senator-elect if he has not been legally elected, or to exclude him by a majority vote if he does not meet the qualifications prescribed by the Constitution. That is the Senate's authority to act by majority vote. The amendment which I presented is all-embracing; it takes in all the qualifications which the Senate can consider and determine by a majority vote.

The other remedy is by an expulsion; and the applicable provision of the Constitution is:

> Each House may * * * with the concurrence of two-thirds, expel a Member.

That is an unlimited authority.

Almost from the inception of the Senate's consideration of such cases, there has time and again arisen the question of what is the authority of the Senate in a case which involves in no way the qualifications or the election. I wanted by the amendment I propose to present a clear picture of my interpretation and, I think, the interpretation of the able Senator from Oregon, the able Senator from Utah, and many others of the question of what the Constitution authorizes us to do by a majority vote and what it authorizes us to do by a two-thirds vote.

If I were to withdraw my amendment, and if we should simply vote, as has been suggested, on the Green amendment to the resolution—which is that the case of WILLIAM LANGER does not fall within the constitutional provisions of expulsion by a two-thirds vote—we should not be deciding anything; we should not be laying down any principle; we should simply be deciding that we are not going to expel WILLIAM LANGER by a two-thirds vote.

What I am interested in is to secure a proper interpretation by the Senate of the Constitution of the United States. I think that is transcendental and all-important, and it is not particularly a question of what we are going to do with respect to Mr. LANGER.

Mr. BARKLEY. Mr. President, will the Senator yield to me for a question?

Mr. OVERTON. The Senator from Michigan has the floor, but I shall be very glad to defer to the Senator from Kentucky.

Mr. BARKLEY. Does the Senator maintain the view that, in passing upon a single case, regardless of whether it be by a majority vote or by a two-thirds vote, the Senate should lay down a rule by which all future Senates will be bound? Is it not better to leave each case to stand on its own bottom and its own merits, and to leave the Senate free to act on each case as it is presented, instead of undertaking, as if we were a supreme court, to interpret the Constitution not only with respect to this case but with respect to all future cases, so that the only consideration the Senate could give to any future case would be with respect to whether a Senator-elect was 30 years of age, whether he had been 9 years a citizen, and whether he had been duly elected?

Mr. OVERTON. By a majority vote?

Mr. BARKLEY. Yes.

Mr. OVERTON. That is exactly my purpose.

Mr. BARKLEY. My question presupposes on my part the belief that I do not think it is wise to undertake to bind future Senates on that issue. "Sufficient unto the day is the evil thereof." If the Senate desires by a majority vote or by a two-thirds vote to retain Senator LANGER, that is all we shall be passing on; that is all we are called upon to pass on, it seems to me. Other cases which may arise in the future will rest on their own merits and, it may be, a different set of circumstances.

I should hate to see the Senate go on record as stating that throughout all time hereafter the Senate cannot consider anything except a Senator-elect's age, the length of his residence, and his certificate of election.

Mr. OVERTON. By a majority vote, does the Senator mean?

Mr. BARKLEY. Well, yes; by a majority vote, of course; because a Senator can be turned out of the Senate by a two-thirds vote without any cause whatever.

Mr. OVERTON. Certainly.

Mr. BARKLEY. It is not necessary to give any reason; if there is a two-thirds vote, out he goes.

Mr. OVERTON. However, let me state—if the Senator from Michigan will pardon me—that my purpose is to set a precedent which will stop defeated minorities and disgruntled politicians from coming before the Senate and asking the Senate of the United States to pull their chestnuts out of the fire and to step beyond the constitutional provisions and exclude a man from the Senate on some ground extraneous to the Constitution.

Mr. BARKLEY. Mr. President, if the Senator from Michigan will permit me in that connection, it seems to me that the infrequency of cases of this sort in over 150 years proves that the right to investigate these matters has not been abused by the Senate. I do not think it has been abused. I do not think the Senate is open to the charge that it has permitted disgruntled politicians and disappointed office seekers to clutter up the records with contests involving the right of a man to a seat. In the most recent cases there cannot be any charge made that the matters were brought to the Senate by disgruntled politicians or disappointed office seekers, because the facts which resulted in the denial of a seat in the Senate to two men were brought out of the initiative of the Senate itself which had previously appointed a committee, not to look into their cases particularly, but into all cases. So I doubt very much whether the right of the Senate to review these matters has been abused because of the importunities of unsuccessful candidates or political parties.

Mr. OVERTON. There have been many cases.

Mr. VANDENBERG. Mr. President, may I, just for a moment, reclaim the floor?

Mr. OVERTON. The Senator from Michigan has the floor.

Mr. VANDENBERG. I applaud the objective to which the able Senator from Louisiana has directed what is a very worthy effort, but it seems to me, from my viewpoint, that if we settle the William Langer case today that is about all we need try to settle. I think we will have difficulty enough in settling that. I know I have had difficulty enough in coming to any conclusion in respect to it, without attempting to write a charter for the future. Unfortunately, perhaps, the view which the Senator from Louisiana presents in respect to the fundamental law is disagreed to by other able constitutional lawyers in the Senate. I merely should like to be relieved of the necessity of passing upon a controversy which is not necessary, it seems to me. There is enough controversy when we pass upon the Langer case.

Mr. CONNALLY. Mr. President, will the Senator yield?

Mr. VANDENBERG. I yield to the Senator from Texas.

Mr. CONNALLY. Along the line suggested by the Senator from Michigan, the Langer case, in the future, will be judged, of course, in the light of the debate and what has transpired here. Whether we use the language the Senator from Louisiana advances or do not do it, will certainly in effect be a precedent in conformity with what he undertakes to do without making a formal declaration in so many words.

So our action here will be judged by what the debates have shown and by the result. Whether we vote against the resolution and refuse to expel Mr. LANGER on the grounds that have been advanced or vote to the contrary, it seems to me that probably the purpose the Senator has in mind will, in effect, be subserved, and yet Senators such as the Senator from Michigan will be relieved from any embarrassment about choosing as between different amendments.

Mr. VANDENBERG. And choosing with respect to a subject that has not been adequately debated and is not a part of the case at bar.

Mr. OVERTON. Mr. President, will the Senator from Michigan yield to me?

Mr. VANDENBERG. I yield.

Mr. OVERTON. In the event I withdraw my amendment, and if no other amendment to the Green amendment shall be agreed to, the vote will be on the Green amendment, which is that the William Langer case does not fall within the constitutional provision for expulsion by a two-thirds vote. If, on the other hand, the Green amendment should be voted down, then would not the necessary implication be that it would require a two-thirds vote of the Senators?

Mr. VANDENBERG. Yes; or we could strike out the word "not" in the Green amendment and have an affirmative vote produce the same result, but the roll call would be confined to the issue at bar.

Mr. OVERTON. I am not going to take the position that the case of WILLIAM LANGER does fall within the constitutional provision for expulsion, because I am not going to take the position that WILLIAM LANGER is subject to expulsion.

Mr. VANDENBERG. It seems to me that the Senator from Louisiana would reach every purpose he wishes to reach with respect to the Langer case by a vote either "yea" or "nay" on the very simple proposition submitted by the Senator from Rhode Island, and at the same time I would be permitted to vote the way I want to vote by confining the issue as indicated. Why must we complicate it?

Mr. OVERTON. Would there be any objection to my modifying my amendment by striking out a part of it and letting it read in this way:

That said WILLIAM LANGER cannot, except by a two-thirds vote, be deprived of a seat in the United States Senate.

Mr. BARKLEY. Mr. President, if the Senator will permit a suggestion, that is precisely what the first part of the committee amendment does.

Mr. OVERTON. I think not.

Mr. BARKLEY. It passes upon that question.

Mr. OVERTON. No; the committee amendment states that it is not a matter of expulsion at all. I want to take the position that expulsion is the only remedy.

Mr. BARKLEY. Of course, that is where the Senator, it seems to me, is undertaking to bind future Senates.

Mr. OVERTON. My proposal, then, would merely say—

That the said WILLIAM LANGER cannot, except by a two-thirds vote, be deprived of his seat in the United States Senate.

Mr. BARKLEY. Of course, I do not want to take the time of the Senator from Michigan, but, by analogy, it would mean that no other Senator who comes here in the future, provided he is old enough and has lived long enough in the United States and has a certificate, could not only not be expelled but could not even be excluded when he knocks on the doors of the Senate except by a two-thirds vote. I do not think the Senator would harm the Langer case by permitting a vote of the Senate on the committee proposal, because whether a Senator votes "yes" or votes "nay" on the question that it does or does not come within the two-thirds-vote rule, the Senate will pass upon that question as it applies to this case, and will leave the Senate in the future to pass upon the same question in regard to any other case that may arise.

Mr. MURDOCK. Mr. President, will the Senator yield?

Mr. OVERTON. I have not the floor. The Senator from Michigan has the floor. I desire to speak later.

Mr. VANDENBERG. I yield to the Senator from Utah.

Mr. MURDOCK. I am thoroughly in agreement with the Senator from Louisiana that his amendment is a proper one, and I should like to see a precedent established; but I am inclined to the view today that, inasmuch as the seat of the Senator from North Dakota is questioned, it would be better and fairer to all Senators who may vote on the question to confine the issue, as nearly as we can, to the Langer case.

In talking with the minority leader he advises me that he intended to offer, if he had not been precluded under the Senate rule, an amendment identical with the resolution in the Smoot case as a substitute for the Green resolution. I should like to see the Senate vote on that question just as it did in the Smoot case. If I may have the attention of the Senator from Louisiana, agreeing with him thoroughly on the principle involved in this question, I should like to request him very respectfully to withdraw his amendment and let the minority leader or the Senator from Louisiana, if he so desires, or some other Senator, offer as a substitute a resolution similar to the one offered in the Smoot case, which would permit a vote on the question of whether we can exclude by a majority vote or can expel, if expel at all, by a two-thirds vote.

Mr. BANKHEAD. Mr. President, will the Senator restate the language used in the Smoot resolution?

Mr. MURDOCK. If the language in the Smoot case were used, the resolution of the Senator from Rhode Island [Mr. GREEN] would read as follows:

Resolved (two-thirds of the Senators present concurring therein), That WILLIAM LANGER is not entitled to be a Senator of the United States from the State of North Dakota.

The only words substituted for words in the resolution in the Smoot case are the name "WILLIAM LANGER" instead of "Reed Smoot" and "North Dakota" instead of "Utah."

Mr. VANDENBERG. Mr. President, obviously this question cannot be satisfactorily concluded in my brief time on the floor. I have achieved the purpose I wanted to achieve: I have brought this matter to the attention of the Senate, and I am hopeful that there can be some sort of an agreement upon terminology before we finally have to vote, so that those of us who know what we think about the two-thirds problem can vote upon that question without having it involved with anything else.

Mr. OVERTON. Mr. President, will the Senator from Michigan yield to me for a moment?

Mr. VANDENBERG. I yield.

Mr. OVERTON. While the Senator was talking, and since this discussion has arisen, I have conferred with the able Senator from Oregon, the minority leader, and he and I have agreed to ascertain whether it would be satisfactory if I should withdraw the amendment I have offered and either the Senator from Oregon or I offer this amendment in lieu thereof:

Resolved, That the case of WILLIAM LANGER does fall within the constitutional provision for expulsion by a two-thirds vote, if cause therefor exists.

Mr. VANDENBERG. I have no objection to that, so far as I am concerned.

Mr. OVERTON. I ask unanimous consent to withdraw my amendment.

The PRESIDING OFFICER (Mr. HILL in the chair). The Senator has the right to withdraw his amendment without any consent being given.

Mr. OVERTON. Mr. President, I offer the amendment which I send to the desk.

The PRESIDING OFFICER. The Senator from Louisiana modifies his amendment, and the clerk will report the modification.

The legislative clerk read as follows:

Resolved, That the case of WILLIAM LANGER does fall within the constitutional provisions for expulsion by a two-thirds vote, if cause therefor exists.

Mr. GEORGE. Mr. President, will the Senator from Michigan yield to me?

Mr. VANDENBERG. I yield.

Mr. GEORGE. I am not asking anyone to agree with me, but I want to say now that I definitely disagree with the Senator from Oregon when he takes the position that moral turpitude is necessarily a continuing offense. I have too much experience with the grace of God ever to subscribe to that kind of a doctrine, and I would not today vote to expel Senator LANGER from the Senate, because not a single, solitary word has ever been offered in the evidence or brought to the attention of the committee of any misconduct whatever upon his part since he became a Member of the Senate.

I interrupted the Senator from Michigan to say merely that the first branch of the resolution, upon which the chairman of the committee has already asked for a separate vote, directly and definitely raises the very issue which he wishes to raise, that is—

Resolved, That the case of WILLIAM LANGER does not fall within the constitutional provisions for expulsion by a two-thirds vote.

If that should be approved by the Senate, it would mean that Mr. LANGER would not have to be expelled by a two-thirds vote, or, putting it in the affirmative, it would mean that in his case, if the committee's contention is correct, a majority vote for exclusion only is involved.

This resolution, if adopted by the Senate, would mean, of course, that a majority vote would be sufficient. If it were rejected by the Senate, it would mean definitely that WILLIAM LANGER would be entitled to his seat here unless by a two-thirds vote he were expelled.

I say frankly that would be the end of the case, so far as I am concerned, because if this provision should be rejected, then we would be faced with the simple proposition of expulsion, and there is no evidence here on which a conscientious man could vote for expulsion, unless he is blessed with a very fertile imagination; is one who can think that things which occurred long in the past and a condition which once existed are bound to continue all the way through into the future; and I disclaim that kind of imagination.

This case is made in the record. The record itself shows that nothing is involved which has occurred since Mr. LANGER came to the Senate. The record shows that the only thing raised is the question of qualifications, and the evidence upon that point all relates to transactions and to incidents which occurred before he came to the Senate, some of them long before. So if the first branch of the resolution should be rejected, it would mean exactly what the Senator from Louisiana hopes to accomplish by his amendment, so far as this particular case is concerned.

Mr. MCNARY and Mr. BONE addressed the Chair.

The PRESIDING OFFICER. Does the Senator from Michigan yield; and if so, to whom?

Mr. VANDENBERG. I yield to the Senator from Oregon.

Mr. McNARY. While the able Senator from Georgia will not agree with the Senator from Oregon, I agree with the Senator from Georgia in one particular, except that I think the point could be raised by the Green proposal, as amended.

If I may add a word, I do not believe we are trying Senator LANGER upon some little things which happened, but upon a charge of present baseness of character by reason of the things which have been alleged.

Mr. VANDENBERG. Mr. President, I am content to have clarified the situation a bit by the action which has been taken.

Mr. BONE. Mr. President, I should like to propound a parliamentary inquiry. If the amendment offered by the Senator from Rhode Island [Mr. GREEN] shall be submitted, a vote one way or the other on that amendment would be decisive of a number of important questions in the case. So I propound the parliamentary inquiry, If this amendment should be submitted a bare majority voting against the amendment, would be sufficient to kill the amendment?

The PRESIDING OFFICER. Certainly it would kill the amendment. If a majority did not vote for the amendment, the amendment would be rejected.

Mr. BONE. That would simply leave the question, then, to be determined by a majority vote of the Senate, would it not? I want to get the parliamentary situation clear in my mind.

The PRESIDING OFFICER. Certainly, so far as the amendment is concerned it would be determined by a majority vote.

Mr. BONE. This amendment is so phrased that it really determines the legal questions in the case, as I understand, because the amendment provides that Senator LANGER does not fall within the constitutional provision for expulsion by a two-thirds vote. Therefore, if by a majority the Senate votes down this amendment, the Senate then declares the law of the case and, thereafter, it is obvious, a majority vote would have to decide the main question. Is that correct?

The PRESIDING OFFICER. The Senator is correct.

Mr. OVERTON. Mr. President——

Mr. BONE. Let me restate the situation; it appears that the Senator from Louisiana does not understand it as I do.

If the Senate, by a bare majority vote, should vote adversely on the amendment of the Senator from Rhode Island [Mr. GREEN], that would settle the law of the case. Am I correct up to that point?

Mr. OVERTON. It would settle the law of the case, and would require a two-thirds vote.

Mr. BONE. This amendment says that the case of Senator LANGER does not fall within the provisions for a two-thirds expulsion vote. All I am seeking is to get the matter straight. Perhaps I am twisted in my understanding of it, but there has been so much confusing argument on this question that I want to get it straight.

Mr. OVERTON. If the Senate does declare that the case of WILLIAM LANGER does not fall within the expulsion provisions, then a majority vote would decide the question, but if we vote down the Green amendment, or if we vote for my substitute amendment, a two-thirds vote would then be required.

Mr. BONE. I understand. My principal reason for making the inquiry is that that vote would be decisive one way or the other. If we vote the amendment down, then I assume a two-thirds vote would be necessary. If the other way, the opposite would be true.

Mr. OVERTON. That is correct, except that it is much more obvious that if we vote for the amendment I have offered, we meet the issue fairly and squarely; that is, that the case of WILLIAM LANGER does fall within the constitutional provision for expulsion by a two-thirds vote; and I have added "if cause therefor exists." That meets the issue fairly and squarely, and we vote it up or down, and make a precedent.

Mr. BONE. The explanation by the able Senator from Louisiana is probably much clearer than my own cumbersome attempt to determine the law in the case. The point I am getting at is that the vote would be decisive.

Mr. OVERTON. The vote on my amendment would be decisive.

Mr. MURDOCK. Mr. President, will the Senator from Washington yield?

Mr. BONE. I yield.

Mr. MURDOCK. Let me call to the attention of the Senator from Washington and the Senator from Louisiana the fact that if by a majority vote we adopt the first branch of the Green amendment, we merely state that the Langer case does not fall within the expulsion clause of the Constitution, but we do not say under what clause it does fall, if any. So that we would accomplish nothing by the adoption of the first branch of the Green amendment, except to say that the case does not fall within the constitutional provision for expulsion. Whereas if the substitute, or the amendment of the Senator from Louisiana [Mr. OVERTON] were adopted, we would affirmatively say the case does fall within the expulsion clause of the Constitution, and then, when we vote on the second branch of the Green amendment, we know then, affirmatively, and by vote of the Senate, that it takes a two-thirds vote rather than a majority.

Mr. BONE. I know I am not the only one who is confused about the matter, because that is made evident by the questions which have been asked, and by the attempts made to clarify the issue. My only reason for propounding the question arises out of the fact that a majority vote on the amendment, one way or the other, will determine the question whether or not later on a two-thirds vote shall be required. So that a bare majority vote becomes decisive of the necessity or the lack of necessity for a two-thirds vote. We therefore confront the possibility of a majority of the Senate finally deciding a question which must be ultimately decided by two-thirds. The thing presents utterly impossible facets.

I confess I cannot understand a majority of the Senate voting and by a majority vote controlling what two-thirds must later have to do. A bare majority vote would invoke, not one of our own rules, but a constitutional provision requiring a two-thirds vote. Our own rules make no reference to a two-thirds vote. Some confusion arises among Members because of that fact, if it be a fact.

Mr. OVERTON. The Senator is in error, because the procedure of the Senate is always determined by a majority vote, and cannot be determined otherwise.

Mr. BONE. Then the majority vote in one case must, in legal effect, control a two-thirds vote later on because of the constitutional provision and not our own rules.

Mr. OVERTON. Certainly; necessarily must control.

Mr. BONE. Let us have that understood.

Mr. McNARY. Mr. President——

The PRESIDING OFFICER. The Senator from Oregon has taken all his time. Does the Senator from Washington yield to the Senator from Oregon?

Mr. BONE. I have yielded the floor.

The PRESIDING OFFICER. The question is——

Mr. BARKLEY. Mr. President, I have been called from the Chamber. What is the latest edition of the proposal?

The PRESIDING OFFICER. The question is on the amendment of the Senator from Louisiana [Mr. OVERTON] as further modified.

Mr. BARKLEY. How much further has it been modified?

The PRESIDING OFFICER. The clerk will read the amendment as now proposed.

The legislative clerk read as follows:

Resolved, That the case of WILLIAM LANGER does fall within the constitutional provisions for expulsion by a two-thirds vote, if cause therefor exists.

Mr. BARKLEY. Mr. President, may I be recognized?

The PRESIDING OFFICER. The Chair recognizes the Senator from Kentucky.

Mr. BARKLEY. Of course, the Senator's amendment is contradictory to itself and to the Constitution of the United States. The Constitution does not require that any cause be given by the Senate for expulsion, provided it is done by two-thirds vote. The Senate can expel a Member for any reason, or without any reason whatever. We do not have to assign any reason for expelling a Member by a two-thirds vote. A moral duty rests upon the Senate, I assume, to give a reason for its action, but, so far as the Constitution itself is concerned, we do not have to assign any reason. A Senator could move to expel me now, and if on that motion he should obtain a two-thirds vote I would have to go out of the door of the Senate. Such action could be taken without the Senator making the motion assigning any reason. There might be good reason for taking such

action, but it would not be necessary to assign it.

Mr. OVERTON. Mr. President, will the Senator yield?

Mr BARKLEY. I yield.

Mr. OVERTON. The phrase "if cause therefor exists" does not mean that a constitutional cause exists. I thoroughly agree with the Senator that the Senate can expel a Member for cause or without assigning any reason.

Mr. BARKLEY. The Senate can vote to expel a Member because it does not like him, and no one can do anything about it.

Mr. OVERTON. That is correct. But if the Senator has not made up his mind one way or the other as to whether the Langer case falls within the expulsion power of the Senate, there would be no objection to a provision being adopted which states that it falls within that power in the event some ground existed therefor. That is all I have in mind.

Mr. BARKLEY. The Senator from Louisiana, even under his modified amendment, is seeking to establish a policy in this case which will bind future United States Senates.

Mr. President, I wish merely to state briefly my views with respect to this situation. They have nothing to do with the merits of the case. I shall not discuss the merits of the Langer case at all. The Senate will do what it wishes about the case. I do not know how any Senator is going to vote, except those Senators who have spoken. I have not asked any Senator how he is going to vote, I do not intend to ask any Senator how he is going to vote, and I have not in any way attempted to influence any Senator's vote on this matter. It is not a partisan matter. It is not in any sense an administration matter. I have frequently been asked privately if the administration has taken any hand in this matter, and my reply has been universally "No." I have never discussed the case with anyone outside the Senate, and personally I am not concerned about what the Senate does with the Langer case.

Mr. President, I feel very strongly that nothing ought to be done here that undertakes to bind future Senates, and I am more concerned about that question than I am about whether the Senator from North Dakota is seated or unseated. I do not think we ought to do anything here that undertakes to bind, or, in effect, would bind, future Senates in such a way that they would be handicapped in dealing on its own merits with any situation which might arise under different circumstances from those involved in the Langer case.

I happen to be one of those who believe that if the Senate can, by a majority vote, exclude a man when he comes here, because of things that have happened prior to his effort to be admitted, the Senate can deal with the matter ab initio as if he were now knocking at the door of the Senate, instead of having served for more than a year. My judgment in that respect may be somewhat clouded by what happened at the time the Senator from North Dakota came seeking admission to the Senate. Yet I am not in any way prejudiced. I have no prejudice one way or the other with regard to the Senator from North Dakota. Personally, I like him. He has been very agreeable and very courteous to me, and I have not the slightest prejudice whatever against him as a human being. If he is retained in the Senate I shall, I am sure, get along with him as I have up to now as a Member of this body, and I think he will show me the same courtesy and consideration which I think has been shown him during the last year and 2 months.

Mr. President, I lay down the proposition, however, that when the Senator came here with a certificate from the authorities of North Dakota, with a cloud upon his title in the form of charges which were filed with me by reason of the position I happen to hold, and those charges were laid before the Senate he could have been excluded by a majority vote until the committee investigated his right to a seat. In taking the position I did on the first day of the session when the Senator presented his credentials, I did take it as a matter of whim. I took that position after consulting not only the parliamentarian as to precedents in such cases, but after consulting the chairman of the Committee on Privileges and Elections, and after consulting the acting minority leader, the Senator from Vermont [Mr. AUSTIN], in the absence of the Senator from Oregon [Mr. MCNARY], who was ill. Having consulted the chairman of the Committee on Privileges and Elections, and having consulted the acting minority leader, and having consulted the parliamentarian and the Vice President as to the effect of permitting the Senator from North Dakota to take the oath without prejudice, which meant without prejudice to him and to the Senate, I felt that we were observing the right of the Senate ab initio to investigate and pass upon his right to his seat.

Under the statement I made here on that day, the Senator was permitted to take the oath without prejudice, and every Senator was in his seat, except those who were detained by illness or other reasons, for that was the day when the new Congress began. There was a fuller attendance that day, I should say, than there has been any day since, except probably the days when we declared war on Japan and on Germany and Italy. It was made perfectly plain on that day that there were charges filed, involving the right of the Senator to his seat. Every Senator understood that. I made that statement on the floor, and I made the statement that the charges were serious.

Mr. MCNARY. Mr. President, will the Senator yield?

Mr. BARKLEY. I shall yield in a moment. I do not think anyone will dispute the fact that they were serious charges, which if true would affect, in my judgment, and what seemed to be the judgment of the Senate at that time, Senator LANGER'S right to his seat here.

I now yield to the Senator from Oregon.

Mr. MCNARY. Does the able Senator believe that his gracious and kindly admonition to the Senate that the action proposed to be taken would be without prejudice, in any way changed the constitutional rights of the Senator from North Dakota or of the Senate?

Mr. BARKLEY. Mr. President, that would involve a question I cannot indulge in discussing in the time which is at my disposal, but I will say that no Senator protested my statement at the time. No one on behalf of the Senator from North Dakota protested at the time that by admission tentatively to a seat here without prejudice the Senate would be deprived of its right to pass upon his right of admission to the Senate. That was not simply my action; it was the action of the Senate. I asked that the Senator be allowed to take the oath without prejudice. It was agreed to unanimously by the Senate. No one objected. The Senator from North Dakota came in under those circumstances and took the oath under those circumstances.

Any Senator could have raised the point and prevented the unanimous agreement. The only Senator who rose to make inquiry was the Senator from Vermont [Mr. AUSTIN], who did so in his capacity as acting minority leader. I had consulted him previously, as I had consulted other Senators, including the senior Senator from North Dakota [Mr. NYE]. If any Senator had disputed the wisdom of the proposed action he could have arisen and said, "The Senate is not bound, and I will not be bound by such a unanimous-consent agreement. The Senator from North Dakota may be allowed to take his seat provided the Senate reserves its right to pass ab initio on his right to come here in the first instance as a Senator."

Mr. MCNARY and Mr. MURDOCK rose.

Mr. BARKLEY. I shall yield in a moment, Mr. President. The action then taken may not constitute law. I do not mean to say that we can abrogate any well-defined constitutional provision even if the United States Senate by its own unanimous consent permits a Senator to come here under those circumstances. Certainly no one objected on behalf of the Senator from North Dakota to that procedure, which any Senator had the right to do. If any Senator had objected, then the question would have come up on a motion to exclude the Senator, and a majority vote would have excluded him, and he would have been hitched on the outside of the Senate until the Senate Committee on Privileges and Elections had made its investigation and the Senate had passed upon the committee's report and determined whether he was entitled to enter the Senate at all.

My feeling about it is this: The Senate may now repudiate its unanimous-consent action on that day if it wishes to do so. It has the power to do it. It may now say that, although we sat here silently in our seats and agreed that he be admitted without prejudice in spite of the charges, we may now repudiate that action. The agreement was understood to mean that the Senate could investigate the charges and decide, as though it had originally decided the question, whether he was entitled to a seat in the Senate, and that his status quo would be preserved. That agreement

was entered into unanimously. Everyone thought that that was what was done, and no one disputed it. If the Senate now desires to repudiate its own action in that regard it has the power to do so. So far as I am concerned, I do not intend to vote to do it. I say that because I took part in the proceedings. I thought I understood the mood and intention of the Senate at the time. I admit that that does not constitute any constitutional law on the subject.

Mr. McNARY. Does the Senator beleve that we did something that had not been done years and years before? Let me add, representing the minority, that the Senator from Vermont [Mr. AUSTIN] asked particularly if the agreement would have any effect upon the necessary two-thirds vote to expel a Senator. The reply was "No."

Mr. BARKLEY. The reply was that only a majority vote would be necessary.

Mr. McNARY. No; the reply was that a majority vote would test his qualifications only.

Mr. BARKLEY. This fight is over his qualifications.

Mr. McNARY. Not at all.

Mr. BARKLEY. Absolutely. When the Chair announced, in response to the inquiry of the Senator from Vermont as to whether admitting him at that time under the circumstances would later require a two-thirds vote or a majority vote to exclude, the Vice President announced that only a majority vote would be required later. Nobody disputed that statement at the time. If any Senator had disputed it, a motion would have been in order to exclude him, and such a motion could have been carried by a majority vote. It is not contended that the Senate cannot, by a majority vote, decline to allow a Senator-elect who presents himself here to take the oath of office.

Mr. AUSTIN. Mr. President, will the Senator yield?

Mr. BARKLEY. I yield.

Mr. AUSTIN. Under the circumstances, I have remained silent. My question, asked under a reservation of the right to object, was this:

> Does this procedure waive any requirement of a two-thirds vote?

I think that was an unfinished question, in fact. It should have been made complete by the addition of a phrase which would show that we were contemplating the preservation of all rights—the rights of the Senate and the rights of the respondent. That was the sole purpose of my question. It was not well conceived. I did not intend to obtain a ruling upon the question of whether one sort of vote or another should obtain. However, what happened, following that, was this:

> The VICE PRESIDENT. The Parliamentarian advises the Chair that it does not.

That answers the question in one way, but is not the full answer. Thereupon followed this:

> If this agreement is entered into, only a majority of the Senate will be required to pass on the qualifications of the Senator-elect.

I must say, in all candor, that notwithstanding my views about this case—and that is the only thing we are called upon to judge—I did not intend to foreclose the issue, but rather intended by my question to keep the issue open for the Senate and for the respondent, so that, notwithstanding our agreement, if he wanted to raise the question of a two-thirds vote, he could still do so. I make that statement so that there may be no misunderstanding.

Mr. McNARY. I think that is a very fair interpretation of the record.

Mr. BARKLEY. I think that is a very fair statement. I think the record, as it is disclosed, in no way committed the Senator from Vermont on the question whether a two-thirds vote or a majority vote would be required later.

I think this question is important so far as the future of the Senate is concerned. It may not be of any importance at all in regard to the Langer case, because, frankly, I think that if there are votes enough to decide that a two-thirds vote is necessary to expel the Senator from North Dakota, there are votes enough to seat him. I do not think the vote would be very much different on the question of seating him than on the question of determining whether a two-thirds vote or a majority vote is required. For that reason I have suggested—although it seemed like putting the cart before the horse—that we vote first on whether the Senator is entitled to a seat; and if a majority should decide that he is entitled to a seat we should not have to pass on the question of a two-thirds or a majority vote.

Mr. MURDOCK. Mr. President, will the Senator yield?

Mr. BARKLEY. I yield.

Mr. MURDOCK. I think the Senator implied that every Senator present on the opening day agreed to what took place. I sat here as a Senator-elect and heard the proposal made; but I was not a Senator until I took the oath.

Mr. BARKLEY. I realize that.

Mr. MURDOCK. I do not want the majority leader to imply that there might be any bad faith on my part.

Mr. BARKLEY. I am not implying bad faith on the part of anybody. Only a third of the Senators were new, or had been reelected; and while we were far down the list on that day in swearing in Senators, there were still some who had not yet been sworn in.

Mr. MURDOCK. I had not been reached.

Mr. BARKLEY. Of course, my remarks do not apply to those Senators.

Mr. MURDOCK. That is all I wished to clear up.

Mr. BARKLEY. On that day the question was raised as to whether the Senator from North Dakota should be admitted tentatively. No Senator objected to his being admitted tentatively, with the understanding that we should consider this case ab initio, as we lawyers say, which means from the beginning, without the Senate being bound by a two-thirds rule. It was the understanding that we could consider his title to the seat whenever the committee investigated the case, as though we were passing upon it on the opening day. On that day, if we had had all the facts before us, we might have excluded him by a majority vote.

Mr. MURDOCK. The Senator does not contend, does he, that even by a unanimous-consent agreement the Senate can wipe out or eradicate a constitutional right?

Mr. BARKLEY. No; I do not so contend. However, I think it is passing strange that, with all the constitutional lawyers in the Senate, when the question was raised on the opening day no Senator objected to the fact that Senator LANGER was coming in under those conditions. No Senator objected on his behalf that he was coming in under those conditions.

Mr. OVERTON. Mr. President, will the Senator yield?

Mr. BARKLEY. I yield.

Mr. OVERTON. In that connection I think it would be well to point out that the petition upon which we acted, and which was referred to the Committee on Privileges and Elections, questioned the validity of the election of WILLIAM LANGER.

Mr. BARKLEY. Yes; it did.

Mr. OVERTON. A majority vote can determine that question.

Mr. BARKLEY. I think that on that day we could have decided by a majority vote whether he should be permitted to take his seat. However, I do not think that the Senate ought to reach the conclusion that when it permits a man on whose title there is a cloud—which question the Senate has the constitutional power to investigate—to take his seat as a matter of courtesy, or otherwise, pending the investigation, the Senate is then bound by a two-thirds rule which did not exist or which did not bind it on the day when the Senator-elect presented himself for admission to the Senate.

Mr. CHANDLER. Mr. President, will my colleague yield?

Mr. BARKLEY. I yield.

Mr. CHANDLER. In defense of my colleague's statement, made on the opening day, when I was present, it was suggested to my colleague that Senator LANGER stand aside and not come into the Senate. On that occasion my colleague stated:

> However, the better practice in such cases seems to have been to allow the Senator-elect to take the oath without prejudice, which means without prejudice to him and without prejudice to the Senate. In the future, after an investigation of these charges—which I do not propose to read or to repeat—the Senate would have a right to determine by a majority vote his fitness and his qualifications to become a Member of the Senate.

That statement was made by my colleague on the opening day, in the presence of Senators who had a right to object, and none objected. Let me say to my colleague that in the future I do not think it will be possible to have the Committee on Privileges and Elections investigate the fitness or qualifications of a Senator-elect under similar circumstances if as little consideration is given to it, after the Senate has directed it to do what this committee has done, as is being given in this case.

Mr. BARKLEY. On the 3d of January 1941 I asked that the Senator from North Dakota be permitted to take the oath without prejudice. If any Senator had objected to that request it would have been in order to move that the Senator-elect be permitted to take the oath without prejudice. Such a motion could have been carried by a majority vote. It would also have been in order to have moved that the Senator-elect be excluded until the Committee on Privileges and Elections had examined his right to a seat; and that motion could have been carried by a majority vote, because it would not have involved expulsion.

We cannot expel a man unless he is a Member of this body. The question which seems to me to be important is this: If, when we have the right by majority vote to exclude him from taking the oath, we permit him to do so tentatively, with the understanding that the Senate shall lose none of its rights, and after he has taken the oath it is contended that we cannot then exclude him except by a two-thirds vote, the result in the future is bound to be that when a Senator-elect presents himself with a cloud on his title the Senate cannot afford to do otherwise than compel him to remain outside the Senate until the Senate has examined his right to a seat. In a case of that sort the State would be deprived of its representation here.

There is one thing which concerns me, and about which I am anxious, but not on account of the Senator from North Dakota, for I have taken no hand in the fight for or against him, as every Senator knows. There is not a Senator who will testify that I have lobbied with him or electioneered with him or asked him how he would vote, or tried to influence his vote; I have not done it. I am interested in the Senate as a body and in its future; and if the Senate is going to vote that, under the circumstances which surrounded the admission of the Senator from North Dakota into this body, thereafter a two-thirds vote will be required to expel him or to exclude him, the result must be that in the future no Senator-elect who knocks at our doors with any cloud upon his title can be admitted; and the Senate has the right at the time to exclude him by a majority vote. I say that, as I said it in the beginning, without the slightest prejudice one way or the other about this case.

Mr. WHEELER. Mr. President, will the Senator yield?

Mr. BARKLEY. I yield to the Senator from Montana.

Mr. WHEELER. I am sure, as the Senator says, that he has no prejudice whatever about this matter. It seems to me that the confusion which exists in the minds of some Senators is due to the fact that on the one hand the question which is involved in some cases is one of fraud in the election itself, and on the other hand the question which is involved in the pending case is one of moral turpitude. If a Senator-elect comes to the Senate of the United States with proper credentials he is entitled to be sworn in; there cannot be any question about that. He could demand that he be sworn in. Mr. LANGER came here with proper credentials. In the petition, as I understand, a question was raised as to whether he secured his election by fraud. If such had been the case, if fraud had occurred, I say that a majority vote could have put him out under the circumstances mentioned by the Senator. However, when the question is one of moral turpitude, I think a different rule prevails, and I think that the Constitution would be so construed by any court in the land.

Mr. BARKLEY. The question whether he secured his election by fraud, if that question were raised in the charges, would be merely an incidental charge. The Committee on Privileges and Elections did not go into that matter at all.

Mr. WHEELER. No evidence was presented on that question.

Mr. BARKLEY. And the report of the committee is not based upon that at all.

Mr. WHEELER. Oh, yes; such a charge was contained in the petition, but it was dismissed by the committee. It is my understanding that the committee considered but dismissed that charge.

Mr. BARKLEY. I am not one of those who believe that the only things which qualify a Senator-elect for membership here are his age, his residence, and his certificate. I think the Senate has the right to go into the question of a man's qualifications. "Qualifications" is an elastic term; but I do not think that the term "qualifications" should be limited to meaning that a man is 30 years of age, has been 9 years a resident of the United States, and has a certificate from a governor or from an election board; because, otherwise, if a Senator-elect came here and had served a term in the penitentiary, and his citizenship had not been restored, we could not pass on the question whether he was entitled to membership.

Mr. WHEELER. Oh, yes; he has to be a citizen of the United States.

Mr. BARKLEY. He may have been a citizen for 9 years before he came here; the Constitution does not say that his citizenship must be continuing.

Mr. WHEELER. Oh, yes; he has to be a citizen of the United States when he applies to the Senate for admission. In the illustration the Senator from Kentucky gives, if the Senator-elect had been convicted and had lost his citizenship, he would not be a citizen.

Mr. BARKLEY. He might have been convicted of a Federal offense, and his citizenship might not have been restored by the President of the United States, or he might have been convicted under a State law and his citizenship might not have been restored by the Governor of the State in which he lived.

Mr. WHEELER. It would not make any difference; he would not be a citizen of the United States if he had been convicted, had lost his citizenship, and his citizenship had not been restored.

Mr. BARKLEY. I do not agree—and I do not suppose the Senator from Montana agrees with me—that we are compelled to limit ourselves to the technical constitutional provision requiring that he must be 30 years of age, must have been 9 years a citizen, and must come here with a certificate.

Mr. WHEELER. I do disagree with the Senator on that point.

Mr. LUCAS. Mr. President, will the Senator yield?

Mr. BARKLEY. I yield.

Mr. LUCAS. If it should be agreed that, under the Constitution, a two-thirds vote is required in order to seat Senator LANGER, would not such a decision mean that in the future, when an individual is elected to the United States Senate and a protest is made by various citizens of his State—a protest similar to that which was filed in the pending case or similar to those which have been made in many other cases, it would be the duty of the United States Senate under such circumstances to refuse to let the Senator-elect take the oath, in the first instance, and thereafter to investigate the charges?

Mr. BARKLEY. That is what I just stated. If it is to be decided by the Senate in the pending case that, notwithstanding the circumstances under which a Senator-elect came to the Senate and was permitted to take the oath—a privilege which he might have been denied by a majority vote—a two-thirds vote is required to exclude him, then in the future I think the Senate will be required in self-defense to say to any Senator-elect who comes here with a cloud upon his title "You cannot be admitted; you must stand aside until the Committee on Privileges and Elections, or any other appropriate committee, investigates your right to be a Senator."

Mr. LUCAS. And that would mean that each State whose Senator-elect was compelled to stand aside would be devoid of representation in the Senate, insofar as that one Senator was concerned. I undertake to say, Mr. President, that, if we were to insist that under such circumstances a Senator-elect stand aside, such a practice would be provocative of contests, one after another. In other words, the flimsiest kind of a pretext would be found by some political enemy or some other individual in the State.

Mr. BARKLEY. Mr. President, my time has expired. I conclude by saying that under such a rule the Senate would be required to protect itself against a two-thirds-vote requirement by excluding a Senator-elect at the very beginning by a majority vote, which the Senate would have a right to do.

Mr. WILEY. Mr. President, in the present case we find ourselves dealing with a great constitutional question. After listening to the arguments yesterday, I felt I had to say something very briefly today.

When Isaac Newton looked at the falling apple, he looked twice, and he gave to the world his discovery of the law of gravitation. For millions of years befuddled human brains had seen apples and other fruit fall, but it had made no impression on them. Newton looked twice, and he beheld a great law.

For millions of years the lightning had flashed across the skies and electricity

had manifested itself to humanity, but it took an Edison to utilize it to light the world. Edison looked twice.

After the Revolution, our founding fathers saw the demon of disunity threatening the peace and liberties of the Thirteen Colonies, and in order to form a more perfect union than they had under the Confederation and in order to establish justice, insure domestic tranquillity, provide for the common defense, promote the general welfare, and secure the blessings of liberty to themselves and their posterity, they ordained and established the Constitution of the United States.

Paraphrasing Job, one can say of these fathers that "the spirit of God had made them, the breath of the Almighty had given them life," and they created an indissoluble union, a government by and for the people.

Mr. President, a few years passed and the demon of disunity again raised its head, and a man named John Marshall looked at the Constitution He did not breathe life into it. Life was there, and he interpreted it to a people just coming into their own. He did not question the validity of it or the power of it. He interpreted it, the breath of life that was in it, the spirit of unity—one nation indivisible. And this growing Nation with its new experiment of free government, of a free people, went forward demonstrating the living power of a great, growing and strenuous Nation. But disunity raised its ugly head and a Jackson slapped it down. The years sped on. The Nation grew in power, but disunity would not down, and on to the stage of action came a giant Daniel Webster. How he loved the Constitution How he interpreted it to this people. He knew that with it this Nation would possess "liberty and union, now and forever, one and inseparable."

Mr. President, Webster understood and exemplified the dignity and the power of the Senate. As I have many times quoted, he said the Senate was "a body not yet moved from its propriety, not lost to a just sense of its own dignity and its own high responsibility." Never once did he question the plenary power of the Senate. Yes, he saw the Republic as one Nation—one and inseparable He saw the Senate as a body to which the country could "look with confidence for wise, moderate, patriotic, and healing counsel."

Then came the Civil War—

testing whether this Nation—

As Lincoln said—

or any other nation so conceived * * * could long endure.

Lincoln did not believe in disunity. Listen to what he said in his first inaugural address:

I hold that in the contemplation of universal law and of the Constitution, the union of these States is perpetual. Perpetuity is implied if not expressed in the fundamental law of all national governments. * * * Continue to execute all the express provisions of our National Constitution and the Union will endure forever, it being impossible to destroy it except by some action not provided for in the instrument itself.

Yes; Lincoln looked twice at the Constitution. He saw the strength and the vitality of the Union, and he said, "No State upon its own motion can lawfully get out of the Union."

Yesterday we heard a great argument by the distinguished senior Senator from Vermont [Mr. AUSTIN]. There was no political heresy in what he said.

Mr. President, when I came to the Senate 3 years ago "Borah of the United States," was here. Every argument we have heard on the floor of the Senate in favor of something that would devitalize the Constitution, this great statesman answered. It has been argued here that this great body under the Constitution, created with plenary power, has no control of its Members except to expel them. It has been argued here that the States alone have the right to fix the qualifications of the men who constitute this great body. One would think we were still operating under the Articles of Confederation. One would think that were still a chain composed of 48 links. No; Mr. President, we are one people, one Nation, indivisible under God.

I said that Senator Borah answered all these unconstitutional arguments advanced by those who would limit the power and the right and the authority of the Senate of the United States. To those who are interested in knowing what Senator Borah and another great statesman, Senator Walsh, of Montana, thought about the legal phases involved in this debate, I recommend that they get volume 68 of the CONGRESSIONAL RECORD and read beginning with page 39 thereof. Senator Borah's remarks appear in volume 69, part I, beginning with page 155.

I say to Senators, if they want to seat Governor LANGER, seat him on the facts. Do not camouflage the issue and deal a dagger's thrust into the Constitution and into the authority and the power of this great body.

Mr President, I listened with a great deal of interest to the argument presented by my distinguished friend the Senator from Connecticut [Mr. DANAHER]. He advanced a new argument. He suggested to the Senate that it did not have jurisdiction. One might just as well advance the argument to the Supreme Court of the United States, after it takes jurisdiction in a case, that it has not jurisdiction. When the Constitution of the United States said that the Senate "shall be the judge of the qualifications of its own Members," there is no body, no individual, or power on earth that can take that power away from the Senate except the Senate of the United States.

My distinguished friend and colleague spent some time on the subject of the proceedings of the Constitutional Convention. Time will not permit me to answer in detail what was said by the distinguished Senator from Connecticut.

At this point I wish to read what I regard as a complete answer to what he said, which appears in a brief by Hon. Price Wickersham, which was presented by Mr. Reed, of Missouri, on December 6, 1927, and was printed as Document No. 4, Seventieth Congress, first session. I read the first five pages of the document:

THE RIGHT OF THE SENATE TO DETERMINE THE QUALIFICATIONS OF ITS MEMBERS

(Price Wickersham, of the Kansas City, Mo., bar)

HAS THE UNITED STATES SENATE PLENARY POWER TO REJECT A SENATOR ELECT?

I. Consideration of the Constitution

1. Pertinent clauses.

2. The language is in the negative; in preliminary drafts of the Constitution the language was in the affirmative.

3. The requirements of age, citizenship, and residence are not qualifications but disqualifications.

Section 2, Article I, of the United States Constitution provides:

"No person shall be a Representative who shall not have attained the age of 25 years, and been 7 years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State in which he shall be chosen."

Section 3, Article I, provides that Senators shall be chosen by the legislature of each State, and that—

"No person shall be a Senator who shall not have attained the age of 30 years and been 9 years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State for which he shall be chosen."

Section 5, Article I, provides:

"Each House shall be the judge of the elections, returns, and qualifications of its own Members. * * *"

And further:

"Each House may determine the rules of its proceedings, punish its Members for disorderly behavior, and, with the concurrence of two-thirds, expel a Member."

The above are all of the pertinent provisions of the Federal Constitution.

It will be noted that section 5, Article I, is a grant of power without limitation in the section itself, and unless section 3 can be construed as a limitation of the grant of power, then it follows that the grant of power contained in section 5 is unlimited in the Constitution.

It will be noted that the language of section 3 is in the negative. This is an important fact. In the original drafts of the Constitution the language of this section was in the affirmative and was purposely changed to the negative. Congressman Taylor, of Ohio, on January 23, 1900 (CONG. REC., p. 1075), in discussing this very issue said:

"It is a notable fact that in the first draft of this constitutional provision which provided for qualification of Representatives in Congress the language was affirmative and positive, and that when it was finally presented for adoption it appeared in the form in which we now find it.

"The slight contemporaneous discussion in the Constitutional Convention was upon the provision in the affirmative form. Why was it changed to the negative? Surely not for the sake of euphony. And certainly not to make it more explicitly exclusive.

"In the report of the committee on detail, submitting the first draft of the Constitution, this section read in the affirmative as follows:

"'Every Member of the House of Representatives shall be of the age of 25 years at least, shall have been a citizen of the United States for at least 3 years before his election, and shall be at the time of his election a resident of the State in which he shall be chosen.'

"In the discussion, Mr. Dickinson opposed the section altogether, expressly because it would be held exclusive, saying he was—

"'Against any recitals of qualifications in the Constitution. It was impossible to make a complete one, and a partial one would, by implication, tie up the hands of the legislature from supplying omissions.'

"Mr. Wilson took the same view, saying:

"'Besides, a partial enumeration of cases will disable the Legislature from disqualifying odious and dangerous characters.'"

The requirements of section 3 as to age, citizenship, and residence are not qualifications; they are disqualifications. This very question was discussed by John Randolph in Congress in 1807, and he said:

"If the Constitution had meant (as was contended) to have settled the qualification of Members, its words would have naturally ran thus: 'Every person who has attained the age of 25 years and been 7 years a citizen of the United States, and who shall, when elected, be an inhabitant of the State from which he shall be chosen, shall be eligible to a seat in the House of Representatives.'

"But so far from fixing the qualifications of Members of that House, the Constitution merely enumerated a few disqualifications with which the States were left to act."

The same view was taken by Mr. Quincy and Mr. Key in the famous Maryland contested-election case reported in the Annual of Congress, volume 1808, at page 908.

Sections 5 and 3, taken together and properly paraphrased to get the true meaning, would read:

"The Senate shall be the judge of the elections, returns, and qualifications of its own Members, but no person shall be a Senator who shall not have attained the age of 30 years and has not been 9 years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State for which he shall be chosen."

This construction of "negative" clauses is upheld by the courts. The case of *Darrow* v. *The People* (8 Colo. 417) is in point. A statute of Colorado made the payment of taxes a necessary qualification for membership in a board of aldermen. There was a provision of the Colorado constitution that "no person except a qualified elector shall be elected or appointed to any civil or military office in the State." The court said:

"It is argued that this provision by implication inhibits the legislature from adding the property qualifications under consideration. There is nothing in the constitution which expressly designates the qualifications of councilmen in a city or town, and this section contains the only language that can possibly be construed as applicable thereto. But it will be observed that the language used is negative in form—that it simply prohibits the election or appointment to office of one not a qualified elector. There is no conflict between it and the statute."

There is no conflict between section 5 which is a full grant of power to the Senate and section 3 which simply prohibits the seating of a person who has not the three requisites of age, citizenship, and residence.

II. Consideration of proceedings of Constitutional Convention

1. Pertinent features of Randolph, Pinckney, and Hamilton plans.

2. Proceedings in Committee of the Whole August 10, 1787.

It is submitted that the above analysis of the language of the Constitution itself is determinative of the question under discussion. However, a brief survey of the proceedings of the Constitutional Convention may serve to make plain the intent of the framers of the Constitution, and this requires a brief analysis of the three major plans for a Federal Constitution that were under consideration. It is necessary to know these plans, so far as this issue is concerned, in order to understand the proceedings which occurred when the clauses in question were under consideration. It is evident to the student of constitutional government that the Constitutional Convention used the structure of Parliament as a guide, insofar as this particular subject is concerned; it is likewise clear that the practice and proceedings of the House of Commons were, to say the least, a guide. Burdick, in his excellent work The Law of the American Constitution, page 168, says:

"In confining to the Houses of Congress the right to judge the elections and qualifications of their own Members the framers of the Constitution were following the practice of the English House of Commons."

The three plans were submitted by Edmund Randolph, Alexander Hamilton, and Charles Pinckney, which plans will be discussed in their reverse order because Randolph's plan was the one that was in the main followed.

Charles Pinckney's plan:

"ART. 5. Each State shall prescribe the time and manner of holding elections by the people for the House of Delegates, and the House of Delegates shall be the judges of the elections, returns, and qualifications of their Members."

Under Pinckney's plan the Senate was to be elected by the House of Delegates. Pinckney was unqualifiedly in favor of removing the election of the Senators as far as possible from the people.

Hamilton's plan:

The Convention met on May 11, 1787, and concluded its deliberations September 17 following. About 2 weeks prior to the close of the Convention Hamilton prepared his plan and furnished it to Mr. Madison, frankly saying that he did not expect that his plan would be adopted but that he had prepared it in order that it might serve as an ideal toward which the United States might eventually work. His plan provided:

"ART. 2. The Assembly shall consist of persons called Representatives, who shall be chosen, except in the first instance, by the free male citizens and inhabitants of the several States comprehended in the Union, all of whom of the age of 21 years and upward shall be entitled to an equal vote."

The plan also provided that the Senate was to be chosen by electors elected by citizens of the several States, who shall have certain property qualifications, and also:

"The Senate shall choose its President and other officers; shall be judge of the qualifications and elections of its Members, etc."

No qualifications of any kind were prescribed in his plan for Senators and the only qualification for Members of the House of Delegates was that as to age above quoted in article 2.

It will be noted that the Senate, under Hamilton's plan, was given the power to "judge of the qualifications" of its Members without limitation as to any qualifications in the plan itself. Hamilton had sat all through the Convention and heard all of the arguments that were advanced upon this subject, and it is significant that in the plan which he prepared toward the very close of the Convention he in no manner limited the right of the Senate to judge of the qualifications of its Members.

Randolph's plan:

Article 2 provided for a House of Delegates and Senate; article 4 provided that—

"The Senate shall be elected and chosen by the House of Delegates."

Article 7 provided that the Senate shall have the sole and exclusive power to declare war. This article and the one providing for the election of the Senate by the House of Delegates is cited to show that Randolph intended that the Senate should have extraordinary powers and that it should be far removed from the people themselves.

Article 5 provided:

"And the House of Delegates shall be the judges of the election, returns, and qualifications of their Members."

When the question under his plan as to whether the House of Delegates should be chosen by the people direct was first voted on it carried by a vote of 5 to 2, two States being divided. There was much discussion during the Convention as to the "qualification" or "prerequisites" as to age, citizenship, and residence in the several States, but there is very little reported as to the debate concerning the question at issue. It appears that shortly prior to August 10 the Convention had directed the committee on detail to prepare a draft of a provision concerning property qualifications of Members of the legislature, and accordingly, the committee reported the following draft:

"SEC. 2. The Legislature of the United States shall have authority to establish such uniform qualifications of the Members of each House with regard to property as to the said legislature shall seem expedient.

"SEC. 4. Each House shall be the judge of the elections, returns, and qualifications of its own Members."

On Friday, August 10, the following debate took place:

"MR. PINCKNEY. The committee, as he had considered, were instructed to report the proper qualifications of property for the Members of the National Legislature, instead of which they have referred the task to the National Legislature itself."

He thereupon argued for a property qualification.

Mr. Rutledge seconded the motion. Upon a viva voce vote the proposition was overwhelmingly defeated.

Mr. Madison then argued against the section.

Mr. Ellsworth agreed that the power given by the section was exceptional, but contended that it was not dangerous.

Thereupon Mr. Morris moved to strike out the words "with regard to property," in order to leave the legislature entirely at large.

"MR. WILLIAMSON. This would surely never be admitted should a majority of the Legislature be composed of any particular description of men—of lawyers, for example, which is no improbable supposition—the future election might be secured to their own body."

On motion to strike out "with regard to property," the vote was ayes 4, noes 7, Delaware not voting.

Mr. Rutledge opposed leaving the power to the legislature, arguing that the qualifications for the Senate should be similar to qualifications for the State legislatures.

Mr. Wilson thought—

"It would be best, on the whole, to let the section go out. A uniform rule would probably never be fixed by the legislature, and this particular power would constructively exclude every other power of regulating qualifications."

On agreeing to article VI, section 2, the vote was ayes 3, noes 7, Delaware not voting.

The above quotations are taken from Madison's report of the debates and are very illuminating. It will be noted that the convention, according to Mr. Pinckney, had directed that the committee prepare a clause prescribing the property qualifications in the Constitution itself, but that the committee had left such power to the legislature; that Mr. Pinckney's motion for a property qualification in the Constitution was defeated overwhelmingly; that the motion to strike out the words "with regard to property" was defeated 7 to 4; that when Mr Wilson pointed out that if the clause "with regard to property" was left in the Constitution that such clause would "constructively exclude every other power of regulating qualifications."

It was evidently the intention and opinion of the Convention that the power should not be so limited. The Constitution already had a provision in it that "each House shall be the judge of the election, returns, and qualifications of its own Members," and it is evident that the Convention thought that such clause was sufficient to give to each House plenary power to judge qualifications, and consequently when a vote was taken as to

whether section 2 of article 6 should remain in the Constitution it was voted down 7 to 3.

It appears that nothing further was said on this subject during the Convention.

Mr. President, my distinguished colleague also spent some time speaking about the provisions of State constitutions prior to the adoption of the Federal Constitution. I thought at one time he was going to make the point that Connecticut was not in the Union, but he veered off from that angle. I cannot discuss or attempt to answer his arguments in detail, but I desire to read at this time the matter contained under heading three of the brief by Price Wickersham, "Provisions of State constitutions prior to adoption of Federal Constitution," on pages 5, 6, and 7:

III. Provisions of State constitutions prior to adoption of Federal Constitution

1. Origin of "judge * * * qualifications" clause.

2. Case of John Breckenridge, of Virginia.

It will be noted that Randolph, Pinckney, and Hamilton in their plans submitted to the convention all used the phrase "each House shall be the judge of the elections, returns, and qualifications of its own Members," or words of the same import. The coincidence of the use of the phrase by the three is indicative of the fact that it was not original with any one of them. What is the origin of the clause? It, of course, did not originate in England, because they had no written constitutions. We, therefore, must examine the constitutions of the States prior to 1789.

The Virginia constitution of 1776 provided for a house of delegates and a senate. The house of delegates was to be composed of—

"Such men as actually resided in and are freeholders of the same, and are qualified according to law."

And the senate requirements were the same as those of the house, except that members of the senate must be "upward of 25 years of age." The constitution further provided:

"And each house shall choose its own speakers, appoint its own officers, settle its own rules of procedure, and direct writs of election for the supply of intermediate vacancies."

And—

"Officeholders or ministers of the gospel of every denomination being incapable of being elected members of either house."

The above are the only pertinent provisions of the Virginia Constitution. Nothing is said about the right of the house to judge of the elections, returns, and qualifications of its own members.

An interesting case arose in 1780. John Breckenridge, a youth of 19, was elected to the house of delegates, which refused him admission upon the ground that he was too young to be entrusted with a decision of matters which were thought to be of such gravity to the State; thereupon his constituents reelected him to the house; the house again refused him admission upon the same ground; thereupon he was elected the third time and the house permitted him to sit In analyzing this case it is clear that the constitution itself did not prescribe any qualifications except residence and freeholdership. There was no provision in the Virginia Constitution specifically giving the house the right to judge of the elections, returns and qualifications of its members.

A search of the records of the Virginia Historical Society fails to reveal the preservation of any debates upon this subject, but it is evident that the house of delegates assumed that it had the inherent power to judge of the qualifications of its members, regardless of the absence of a constitutional provision giving it such power. There were precedents for its action in the history of the English House of Commons and particularly in the case of Henry Downs which arose in the Virginia House of Burgesses in 1742, which is hereinafter commented upon.

The Constitution of North Carolina of 1776 contains no such provision.

The first draft for a constitution for Massachusetts was defeated on March 4, 1778, and a second draft was submitted and adopted in 1780, which, so far as its senate is concerned, required a residence of 5 years and certain property qualifications—but no religious qualifications—and further provided—

"The senate shall be final judges of the elections, returns, and qualifications of their members, as pointed out in this constitution."

The Constitution of New Hampshire of 1784 provided for a residence, property, and religious qualification, and contained the same words as above quoted from the Massachusetts Constitution.

The Georgia constitutions of 1777 and of 1789 and 1798 contained provisions that—

"Each house shall be the final judges of the elections, returns, and qualifications of their members."

It will be noted that the Georgia constitutions did not incorporate the words "as pointed out in this constitution" contained in the Massachusetts and New Hampshire constitutions.

It will thus be seen that the first written constitution which contained the clause in question was the Georgia Constitution of 1777. It is clear that the members of the Constitutional Convention were familiar with the constitutions of Georgia, Massachusetts, and New Hampshire The Convention, and particularly the committee on detail, had the choice of adopting the language of the Massachusetts Constitution or the language of the Georgia Constitution, and they chose the language of the Georgia Constitution, which contained no limitation of the grant of power. This fact is important in view of the contention made by Mr. Beck in his book The Vanishing Rights of the States, that the John Wilkes case, hereinafter discussed, was "the great constitutional landmark of the eighteenth century and determined for all time the right of Englishmen to be represented in Parliament by members of their own choice." If the Colonies, or later the States, or the Constitutional Convention placed any interpretation upon the Wilkes case, as contended for by Mr. Beck, it is truly remarkable that Georgia should have conferred upon each house of its legislature the right to be "the final judges of elections, returns, and qualifications of their members" without any limitation of the power whatsoever, and it is equally remarkable that the Federal Convention should have done likewise.

Mr. President, on the subject which was referred to by my distinguished colleague relating to the right of the Colonies prior to 1776 to reject or expel. I submit and ask to have printed in the RECORD the matter contained under heading four, "The Colonies prior to 1776 considered the right of rejection and expulsion an inherent power of legislative bodies," as shown on pages 7 and 8 in the brief of Price Wickersham.

There being no objection, the matter was ordered to be printed in the RECORD, as follows:

IV. The Colonies, prior to 1776 considered the right of rejection and expulsion an inherent power of legislative bodies

Case of Henry Downs, Virginia House of Burgesses, 1742

Of course, there were no constitutions of the Colonies which contained clauses similar to the one under discussion. Some of the Colonies were proprietary, and some of the charters of the Colonies contained provisions for the functioning of their legislative bodies, and little information is available as to the exercise of the right by such legislative bodies to reject or expel their members. However, an interesting case arose in Virginia in 1742 in the house of burgesses. The journals of the house of burgesses (assembly, 1742–1747) contain the following account of the case of Henry Downs (p. 11):

"Mr. Conway, from the committee of privileges and elections, reported that they had—

"Had under their consideration the information against Mr. Henry Downs, a sitting member, to them referred; and had examined the matter thereof, and heard the said Mr. Downs; whereupon, it appeared to the committee from the transcript of a record of the court of Prince Georges County, in Maryland, produced to the committee, duly attested by the clerk, and certified under the public seal of the said county, that at a county court of the right honorable the lord proprietary of that Province, held at Marlborough Town, in and for the county aforesaid, on the 27th day of June 1721, Henry Downs, together with Edward Brown and James Jones, all of the said county, were indicted of felony, in stealing one sheep, of a white color, of the price of 10 shillings, the property of a certain person unknown, on the 29th day of August then last past, at a place called the Chapel, in that county; and that the said Downs, upon his arraignment, the same 27th day of June aforesaid, did confess himself guilty of the felony and theft, so as aforesaid laid to his charge, and put himself upon the grace and mercy of the court. And thereupon it was considered by that court that the same Henry Downs, by the sheriff of that county, from the bar to the whipping post should be taken, and there being stripped naked from the waist upward, receive on his bare back 15 lashes well laid on by the sheriff aforesaid, so that the blood appear; and that after the whipping aforesaid, the said Henry Downs, by the sheriff aforesaid, be put on the pillory for and during the space of half an hour. And afterwards the said Henry Downs, the same 27th day of June aforesaid, was, with the consent of one Jacob Henderson, clerk (his master), sold by the court aforesaid, for 1 year and 9 months, to one John Middleton, planter, to discharge the fees of the conviction aforesaid. But the said Henry Downs, the sitting member, denied before the committee that he was the same Henry Downs mentioned in the said record But it appeared to the committee from the testimony of several gentlemen, members of this house, that the said Henry Downs, the sitting member, had lately confessed himself to be the same Henry Downs mentioned in the record aforesaid. Thereupon, upon the whole, the committee had come to several resolutions, which he read in his place and afterwards delivered in at the table, where the same were read.

"And the said Mr. Henry Downs was heard in his place and withdrew.

"Then the resolutions of the said committee were again read, and agreed to by the house, nemine contradicente, as follows:

"'*Resolved*, that the said Henry Downs, having been convicted of felony and theft, and punished, as aforesaid, is unworthy to sit as a member in this house;

"'*Resolved*, That the said Henry Downs, for the causes aforesaid, be expelled this house;

"'*Resolved*, That the said Henry Downs be disabled to sit and vote as a member of this house during this present general assembly.'

"Mr. Downs was thereupon expelled the house."

It will be noted that the felony complained of was committed 21 years before Downs was elected, and that there was then no constitution of Virginia giving the right to the house of burgesses to judge of the qualifications of its members. Such right was assumed by the house to be an inherent power of legislative bodies.

Mr. WILEY. Mr. President, I call attention, though I shall not read it, to heading 5 of the brief of Price Wickersham, in which he shows the growth and development of power of judging qualifications in England.

Yesterday, my distinguished colleague, the Senator from Vermont [Mr. AUSTIN], demonstrated clearly that the uniform practice established through the years definitely established the right of the Senate to exercise its discretion as to whether it would seat a Senator before investigation, or investigate before seating.

Mr. President, I now read further from the Wickersham brief, commencing with heading 8 on page 19, to the end of the brief:

VIII. Opinions of authorities on constitutional law

The authorities on constitutional law have not devoted much space in their text to a discussion of this question. It seems to be taken for granted that the House and Senate possess such power as an inherent prerogative of legislative bodies, the courts having no power to pass upon the action of the House or Senate in such matters.

That a legislature has the power to enact statutes increasing the qualifications for office holding prescribed in a constitution is admitted. Throop, on public offices, section 73, says:

"The general rule is that the legislature has full power to prescribe qualifications for holding office in addition to those prescribed in the Constitution; provided, that they are reasonable and not opposed to the constitutional provisions or to the spirit of the Constitution."

Perhaps the best expression by an authority on constitutional law, so far as this question is concerned, is contained in Pomeroy's Constitutional Law, third edition, page 138, to wit:

"The power given to the Senate and to the House of Representatives each to pass upon the validity of the elections of its own Members and upon their personal qualifications seems to be unbounded. But I am very strongly of the opinion that the two Houses together, as one House, cannot pass any statute containing a general rule by which the qualifications of Members as described in the Constitution are either added to or lessened.

"Such a statute would not seem to be a judgment of each House upon the qualifications of its own Members, but a judgment upon the qualifications of the Members of the other branch. The power is sufficiently broad as it stands. Indeed, there is absolutely no restraint upon its exercise except the responsibility of the Representatives to their constituents."

Also see reasoning of Judge Story in point IX following:

IX. The right of the Senate to judge qualifications of its Members is not in derogation of any inherent or retained power of the States

It was contended in the debate upon the motion to reject Roberts in 1900 that a Senator or Congressman was "a representative of the State"—a sort of ambassador to represent the State in the Legislature of the Union—and that the right of the State or district to name and select whomsoever it chose was one of the rights retained by the States when they entered the Union, and articles IX and X of the Constitution were cited, to wit:

"ART. IX. Rights retained by the people. The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.

"ART. X. The powers not delegated to the United States by the Constitution nor prohibited by it to the States, are reserved to the States, respectively, or to the people."

Article X was construed in the case of *Collector v. Day* (11 Wall. 124), in which the Court said:

"This clause does not contain a new grant of power to the States or people, but is simply declaratory of a preexisting condition."

Judge Story, in his memorable work, On the Constitution, volume 1, section 627, says:

"The truth is that the States can exercise no powers whatsoever, which exclusively spring out of the existence of the National Government, which the Constitution does not delegate to them. They have just as much right, and no more, to prescribe new qualifications for a Representative as they have for a President. Each is an officer of the Union, deriving his powers and qualifications from the Constitution, and neither created by, dependent upon, nor controllable by the States. It is no original prerogative of States' power to appoint a Representative, a Senator, or President for the Union.

"These officers owe their existence and functions to the united voice of the whole, not a portion, of the people. Before a State can assert the right it must show that the Constitution has delegated and recognized it. No State can say that it has reserved what it never possessed."

The title of Mr. Beck's book "The Vanishing Rights of the States," is thus seen to be a misnomer. No right of a State can "vanish" that never existed.

X. Conclusion—The Constitution expressly confers the power without limitation upon the Senate; the intent of the framers of the Constitution is plain; history supports the power, the practice of Colonies, States, and Congress upholds the power, and the best governmental policy demands that the Senate exercise the power

We have seen that the Constitution expressly confers the power to "judge qualifications of its own Members" without limitation; that the debates in the Constitutional Convention show that such was the plain intent of the framers of the Constitution; that the authors of the plans submitted to the Constitutional Convention all agreed that such powers should be conferred without limitation; that Georgia first conferred this unlimited power upon its senate in 1777; that the House of Delegates of the State of Virginia in 1780 exercised this power without any constitutional provision and assumed that it was an inherent legislative power; that the Colony of Virginia in 1742 recognized and exercised this right as an inherent legislative power; that the House of Commons and the House of Lords recognized and exercised this right 25 times in the Wilkes case, and that such power was the growth of hundreds of years; that since the adoption of our Federal Constitution Congress has repeatedly exercised such power; that the profoundest students and authorities upon constitutional law declare that the power is absolute.

If there were no precedents to guide this Government, if there was no constitutional provision upon the subject, if the matter were to arise now for the first time, what would be the best governmental policy? Would the delegation of such a power to the Senate be fraught with danger to the Republic? It must be remembered that Senators are officials of the United States Government and not of the States. They legislate not for the States alone but for all the people of the Union. The vote of a Senator affects every State of the Union as much as it does the one from which he is elected. His vote may mean peace or war for the Union. Should not the Union have the right to protect itself against corruption in one of its parts? Should the whole suffer from the dereliction of a part? If it be said that one political party may corruptly and wrongfully decline to seat a Senator-elect of another party, it must be admitted that such a contingency might arise, but it would not destroy the right of the State to representation; another could be elected in his place. Other possibilities readily suggest themselves. For instance, the President might be a Republican and the Senate Republican and the House Democratic, and the House might refuse to pass any appropriation legislation in order to embarrass the administration. This is a contingency that might arise, but what sensible American believes it probable?

Exaggerated illustrations mean nothing; they are futile. As Senator David Reed, of Pennsylvania, in discussing this question in the Senate last spring, said:

"Illustrations can be drawn that make both sides of this question seem silly. We must be guided by reason and not by fancy."

Under our Constitution momentous questions are submitted to the decision of nine Supreme Court judges appointed by the President and not elected by the people. Generally speaking, these judges come from one class—those identified with large interests—and not from the masses; yet the people recognize that ours is a constitutional government and that such procedure is in accordance with law. There is no real danger in submitting to 95 Senators elected by the people the question whether a particular Senator-elect possesses sufficient moral or intellectual qualifications to sit in the greatest deliberative body in the world. We submit to the decision of the Supreme Court when it decides some vital matter by a vote of 5 to 4. May we not intrust the decision of the qualifications of a Senator-elect to the judgment of a majority of 95 Senators elected by the people and responsible to them for their acts? Never in the past has a Senator or Congressman been denied a seat unjustly. History has proven the wisdom of the Constitution in conferring this power upon the Senate.

I might say, Mr. President, that this brief reaches the conclusion—"The Constitution expressly confers the power without limitation upon the Senate; the intent of the framers of the Constitution is plain; history supports the power, the practice of colonies, States, and Congress upholds the power, and the best governmental policy demands that the Senate exercise the power."

Let us look twice. Well might we bear in mind in this critical period the prayer of one who said, "Open Thou mine eyes to behold wondrous things out of Thy law." The seeker referred to the law of the spirit.

Well might we ask that our eyes be not closed in order that we might behold the wondrous glory of the Constitution. Without it we would be nothing—a group of discordant States, a replica of Europe. With it, we are cemented together in one great bond of unity. Without it we would be weak. With it we are strong—one Nation indivisible under the Stars and Stripes.

Do not let a spirit of disunity again manifest itself. Let us not permit ourselves to take any step that would weaken the authority of this great body; weaken the Constitution in one place, and we open the door to weaken it in other places. I repeat, if you want to seat Governor LANGER, seat him on the facts, but do not be carried away by any arguments that would once more give power to the demon of disunity.

MESSAGE FROM THE HOUSE

A message from the House of Representatives, by Mr. Calloway, one of its reading clerks, announced that the House had agreed to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H R. 6736) making appropriations for the fiscal year ending June 30, 1943, for civil functions administered by the War Department, and for other purposes, and that the House insisted upon its disagreement to the amendment of the Senate No. 2 to the bill.

SENATOR FROM NORTH DAKOTA

The Senate resumed consideration of the resolution (S. Res. 220) declaring WILLIAM LANGER not entitled to be a United States Senator from the State of North Dakota.

The PRESIDING OFFICER (Mr. CLARK of Missouri in the chair). The question is on agreeing to the amendment offered by the Senator from Louisiana [Mr. OVERTON], as modified, in the nature of a substitute for the amendment of the Senator from Rhode Island [Mr. GREEN] to Senate Resolution No. 220.

Mr. ELLENDER. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The Chief Clerk called the roll, and the following Senators answered to their names:

Aiken	Gillette	O'Mahoney
Andrews	Glass	Overton
Austin	Green	Pepper
Bailey	Guffey	Radcliffe
Ball	Gurney	Reed
Bankhead	Hayden	Reynolds
Barbour	Herring	Rosier
Barkley	Hill	Russell
Bone	Holman	Schwartz
Brewster	Hughes	Shipstead
Brooks	Johnson, Calif.	Smith
Brown	Johnson, Colo.	Spencer
Bulow	Kilgore	Stewart
Burton	La Follette	Taft
Butler	Langer	Thomas, Idaho
Byrd	Lee	Thomas, Okla.
Capper	Lucas	Thomas, Utah
Caraway	McCarran	Tobey
Chandler	McFarland	Truman
Chavez	McKellar	Tunnell
Clark, Idaho	McNary	Tydings
Clark, Mo.	Maloney	Vandenberg
Connally	Maybank	Van Nuys
Danaher	Mead	Wagner
Davis	Millikin	Walsh
Doxey	Murdock	Wheeler
Ellender	Murray	White
George	Nye	Wiley
Gerry	O'Daniel	Willis

The PRESIDING OFFICER. Eighty-seven Senators have answered to their names. A quorum is present.

The question is on the amendment offered by the Senator from Louisiana [Mr. OVERTON], as modified, to the amendment of the Senator from Rhode Island [Mr. GREEN] to Senate Resolution 220. [Putting the question.] The noes seem to have it. The noes have it, and the amendment is rejected.

The question now recurs on the amendment of the Senator from Rhode Island. [Putting the question.]

Mr. McNARY. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator from Oregon will state his parliamentary inquiry.

Mr. McNARY. On what question was the vote taken?

The PRESIDING OFFICER. On the amendment of the Senator from Louisiana [Mr. OVERTON], as modified, to the so-called Green amendment.

Mr. McNARY. Was the amendment agreed to?

The PRESIDING OFFICER. The amendment was rejected.

Mr. McNARY. I enter a motion to reconsider the vote by which the amendment was rejected.

The PRESIDING OFFICER. The question is on the motion of the Senator from Oregon to reconsider the vote by which the Senate rejected the amendment of the Senator from Louisiana [Mr. OVERTON], as modified, to the amendment of the Senator from Rhode Island [Mr. GREEN].

Mr. McNARY. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The Chief Clerk called the roll, and the following Senators answered to their names:

Aiken	Gillette	O'Mahoney
Andrews	Glass	Overton
Austin	Green	Pepper
Bailey	Guffey	Radcliffe
Ball	Gurney	Reed
Bankhead	Hayden	Reynolds
Barbour	Herring	Rosier
Barkley	Hill	Russell
Bone	Holman	Schwartz
Brewster	Hughes	Shipstead
Brooks	Johnson, Calif.	Smith
Brown	Johnson, Colo.	Spencer
Bulow	Kilgore	Stewart
Burton	La Follette	Taft
Butler	Langer	Thomas, Idaho
Byrd	Lee	Thomas, Okla.
Capper	Lucas	Thomas, Utah
Caraway	McCarran	Tobey
Chandler	McFarland	Truman
Chavez	McKellar	Tunnell
Clark, Idaho	McNary	Tydings
Clark, Mo.	Maloney	Vandenberg
Connally	Maybank	Van Nuys
Danaher	Mead	Wagner
Davis	Millikin	Walsh
Doxey	Murdock	Wheeler
Ellender	Murray	White
George	Nye	Wiley
Gerry	O'Daniel	Willis

The VICE PRESIDENT. Eighty-seven Senators have answered to their names. A quorum is present.

Mr. OVERTON. Mr. President, I inquire what is the parliamentary situation?

The VICE PRESIDENT. The question is on the motion of the Senator from Oregon [Mr. McNARY] to reconsider the vote by which the so-called Overton amendment, as modified, was rejected.

Mr. OVERTON. Mr. President, a parliamentary inquiry. I was called out of the Senate for a few minutes. Am I to understand that this question was disposed of on a viva voce vote?

The VICE PRESIDENT. It was.

Mr. OVERTON. I regret that I was absent. I was gone only for several minutes. I thought the Senator from Georgia and one or two other Senators were to speak. So I thought I could absent myself for a period of a few minutes.

Mr. MURDOCK. Mr. President, will the Senator from Louisiana yield to me?

Mr. OVERTON. Yes; I shall be glad to yield, but I was making a parliamentary inquiry, and, at the proper time, I should like to present the amendment.

Mr. MURDOCK. I should like to say to the Senator that I think there was much confusion in the minds of Members of the Senate—certainly there was in my own—at the time the vote was taken. As I understand the Senator's amendment, it places squarely before the Senate the question of whether Senator LANGER can be expelled by a two-thirds vote or by a majority vote.

Mr. GEORGE. Mr. President, I rise to a point of order.

The VICE PRESIDENT. The Senator from Georgia is recognized to state his point of order.

Mr. GEORGE. The Senate is operating under a strict limitation of time, and argument of this character on a point of order or argument on the merits of the motion is out of order. I make that point.

The VICE PRESIDENT. The point of order of the Senator from Georgia is well taken.

Mr. MURDOCK. Mr. President, I am not making any argument. All I am doing is to try to clarify in my own mind—and I am answering the Senator's point of order, I am not making any argument on the merits or demerits—what is before the Senate. What I am trying to ascertain, and to clarify for the Senate, is what is the question now before the Senate; and I am asking the Senator from Louisiana if his amendment does not bring before the Senate the question of whether Mr. LANGER can be expelled by a majority vote, or whether it takes two-thirds vote. Is that argument, or asking a simple parliamentary question?

Mr. OVERTON. Have I the floor? If so, I shall address myself to the amendment.

Mr. President——

The VICE PRESIDENT. The Senator from Louisiana.

Mr. OVERTON. As I understand it——

Mr. LUCAS. A parliamentary inquiry.

The VICE PRESIDENT. The Senator will state it.

Mr. LUCAS. I merely ask for information. Is a motion to reconsider debatable?

The VICE PRESIDENT. It is the pending question and is debatable.

Mr. LUCAS. I thank the chair.

Mr. OVERTON. Mr. President, for the information of the Senate I shall again read to the Senate the amendment I have proposed as a substitute for the Green amendment. The amendment I propose reads:

Resolved, That the case of WILLIAM LANGER does fall within the constitutional provisions for expulsion by a two-thirds vote, if cause therefor exists.

I should like to modify the amendment by striking out the words "if cause therefor" exists. I modify my amendment by striking out the words "if cause therefor exists."

Mr. BARKLEY. A parliamentary inquiry.

Mr. OVERTON. I have a right to modify my own amendment.

Mr. BARKLEY. Not until the motion to reconsider has been adopted.

The VICE PRESIDENT. The Senator from Kentucky is correct.

Mr. BARKLEY. The Senator cannot modify an amendment on a motion to reconsider the vote by which the amendment has already been passed on.

Mr. OVERTON. I was doing it merely in compliance with the suggestion made by the majority leader, because I always like to follow the majority leader whenever I can. He made the suggestion that the words "if cause therefor exists" should be eliminated.

Mr. BARKLEY. I always appreciate a compliment from the Senator from Louisiana, but I never suggested to him that during the consideration of a motion to reconsider the vote by which an amendment has already been passed on he could modify the amendment.

Mr. OVERTON. It is correct the Senator from Kentucky did not make that suggestion, but a while ago he did suggest that it would be very well to eliminate the words "if cause therefor exists."

Mr. BARKLEY. It would have been proper for the Senator to modify his amendment before it was voted on.

Mr. OVERTON. I intended to do that, but, as I undertook to explain a few minutes ago, during a temporary absence from the Chamber, the amendment was voted upon by a viva voce vote.

The amendment I have offered is in answer to the amendment proposed originally by the Committee on Privileges and Elections, which declared, in effect—I have not the amendment before me—that the case of WILLIAM LANGER does not fall within the constitutional provisions for expulsion by a two-thirds vote, and undertook to assign reasons therefor, the reason being, in effect, that since WILLIAM LANGER has been a Member of the Senate, he has not done any act which would be a ground for expulsion.

Then the chairman of the Committee on Privileges and Elections, I assume after consultation with the majority of the members of the committee, offered an amendment to the committee's own amendment, wherein it is proposed that the case of WILLIAM LANGER does not fall within the constitutional provisions for expulsion by a two-thirds vote, omitting the reason why it does not so fall.

Let me say to the proponents of the resolution who are objecting to the amendment I offer by way of substitute, that it is the Committee on Privileges and Elections which has raised this constitutional question; and I think it is properly raised. I do not think we can intelligently vote upon this question until we do determine whether the case comes within the constitutional provisions relating to expulsion, or whether we can oust the Senator from North Dakota by a bare majority vote.

When I offer the substitute, I bring before the Senate perhaps more clearly than does the Green amendment the question at issue, because the Green amendment expresses the proposition in the negative, whereas my amendment expresses the proposition in the affirmative.

Mr. President, I do not expect to go through the argument I have already made in support of my view and interpretation of the Constitution. It is perhaps sufficient for me to point out briefly that the framers of the Constitution provided, first, that the legislatures of the various States should select Senators. That is provided in the first paragraph of section 3 of article I of the Constitution. That, standing alone in the Constitution, gave to the legislatures of the different States an uncontrolled and unlimited power to select whom they pleased.

Then the Constitution provides that the legislature can exercise that authority only within certain constitutional limitations, namely, that while they may send anyone here whom they choose as a Senator to represent their State, the Senator must have attained a certain age, been for a certain time a citizen, and be an inhabitant of the State from which he is elected.

When a Senator presents himself here who has been sent by the people of a State under the provisions of the Constitution, he can be ousted by a majority vote only if he fails to meet those qualifications prescribed by the Constitution, or if his election is called into question and it is determined that the election was not valid, or if, under the fourteenth amendment to the Constitution, it is shown that he has been guilty of disloyalty, as phrased in the fourteenth amendment.

Mr. President, the amendment I am offering, if adopted, will place the Senate on record, insofar as the Langer case is concerned, as believing that a two-thirds vote is necessary for his exclusion. There is no question at all about the qualifications of Senator LANGER, there is no question at all about his election; there is no question about his loyalty to the Government, there is no question that he holds any other office. Therefore, the only remedy left to the Senate of the United States to protect themselves in their dignity, in their integrity, in their honor, is to invoke the power of expulsion against Senator LANGER, if there be any cause therefor.

Mr. BARKLEY. Mr. President, will the Senator yield?

Mr. OVERTON. I yield.

Mr. BARKLEY. The resolution of the committee, as amended, presents two propositions. One of them is that it does not require a two-thirds vote, and the other is that the Senator from North Dakota is not entitled to his seat. Those are separable propositions, and a separate vote can be obtained on each. The vote would come first, of course, as has been asked by the committee, upon the first part of the resolution. Why is it that the Senator from Louisiana is not willing to have the Senate pass upon the first part of the resolution, upon the determination of which we will then know whether it takes two-thirds or a majority in this case, unless he is seeking to bind future Senates in any similar case, or any possible case, outside of the technical qualifications set up in the Constitution?

Mr. OVERTON. Let me ask the Senator from Kentucky a question. Why should he object to a vote upon the affirmative proposition, that the case falls within the expulsion power of the Senate, instead of voting on the negative proposition that it does not so fall?

Mr. BARKLEY. I have no objection to either method, but we can reach the result by striking out the word "not" in the resolution of the committee so that we would vote affirmatively.

Mr. OVERTON. That is an excellent suggestion, and I did strike out the word "not"; that is all.

Mr. BARKLEY. As I read the Senator's modified amendment, it is a substitute for the first part of the committee resolution.

Mr. OVERTON. It reads exactly as the Green amendment reads, with the word "not" omitted.

Mr. BARKLEY. Why vote on a separate amendment when we can vote on the first part of the committee resolution and get the same result? If the Senate votes down the first part of the committee resolution, then it takes two-thirds to oust the Senator from North Dakota.

Mr. OVERTON. It is because I think we should present the proposition affirmatively, and not in a negative way. Why beat about the bush, say it does not do this and does not do that? Why not say it does so and so? I think that is the way to meet the issue, meet it face to face, squarely, and not say it does not do this and does not do that. Let us say it does fall within the power of expulsion, and trust the Senate thereafter to take the proper action.

Mr. MURDOCK. Mr. President, will the Senator yield?

Mr. OVERTON. I yield.

Mr. MURDOCK. Suppose we should adopt the first branch of the Green resolution. All we would do would be to say that the case does not fall within the constitutional provision for expulsion, but we would not say where it does fall. So that even after voting for the first branch of the Green resolution, it still could be contended, if a majority vote is to unseat Senator LANGER, that he had been unseated, whereas if we vote for the Overton amendment and affirmatively say that this case falls within the constitutional provision for expulsion, then we shall have eliminated any question whatever on that score.

Mr. OVERTON. In other words, we leave it like Mohammed's coffin, suspended in the air.

Mr. MURDOCK. That is true.

Mr. BARKLEY. There are only two baskets in which this head can fall; one of them is the two-thirds vote basket, and the other is the majority vote basket. If we refuse to put the head in the basket that means a two-thirds vote, automatically it comes in that of the majority vote.

Mr. OVERTON. If the Senator from Kentucky can give me one good, valid reason why he does not wish to vote upon this proposition affirmatively, I shall be very glad to consider it.

Mr. BARKLEY. I am sure no reason I can give would satisfy the Senator from Louisiana.

Mr. OVERTON. I can tell the Senator why I do not want to vote on it negatively.

Mr. BARKLEY. I think the simplest and most direct way is to vote on the resolution as it has been presented by the committee, upon which a separate vote

is, of course, possible, and has already been asked. It could not be denied, as I view it. Instead of offering amendments in the nature of substitutes for the committee resolution, I think it is simpler to vote on the resolution brought in by the committee, the result of which will be the same as a vote on the other proposal.

Mr. OVERTON. I regret that in this particular instance I cannot agree with the able Senator from Kentucky.

Mr. BARKLEY. I presume the vote would be the same in either case.

Mr. OVERTON. I assume so.

Mr. BARKLEY. Yes.

Mr. MURDOCK. Mr. President, will the Senator yield?

Mr. OVERTON. I yield.

Mr. MURDOCK. The Senator from Kentucky gives us the illustration that there are only two baskets into which this matter can fall; but what the Overton amendment does is to avoid having it fall out of both of them.

Mr. BARKLEY. No——

Mr. MURDOCK. The Overton amendment places the matter 'n the expulsion basket. All the Green amendment does is to say that the question does not go into the expulsion basket; it does not put it over into the other basket.

Mr. BARKLEY If it does not go into the expulsion basket, it is bound to go into the exclusion basket, because there cannot be any other basket. A Member cannot be ousted from the Senate except by either a two-thirds vote or a majority vote.

Mr. MURDOCK. We want it to go into the expulsion basket.

Mr. BARKLEY. I have no doubt as to which basket the Senator wants to put it in, and the Senator has the privilege of putting it there if he can do so, but if it does not go into that basket, it goes into the other basket.

Mr. MURDOCK. What I want to be sure of is that it goes into a basket, and is not suspended between the two of them.

Mr. OVERTON. Mr. President, I think from the standpoint of the Senator from Kentucky the decision of the question is between Tweedledee and Tweedledum, but from our standpoint it is decidedly different, because we state positively and unequivocally, to use the illustration given by the Senator from Kentucky, as amplified by the Senator from Utah, that we wish to know exactly where the head does fall, and we want it to tumble within the provision of the Constitution relating to expulsion.

Mr. CLARK of Missouri. Mr. President, will the Senator from Louisiana yield?

Mr. OVERTON. I yield the floor.

Mr. CLARK of Missouri. I desire to address myself very briefly to the motion to reconsider, and I do so only for the purpose of pointing out the parliamentary situation, which seems to have become somewhat confused. I happened to have been temporarily in the chair at the time this situation arose. It was a matter of general opinion or knowledge in the Senate that two or three Senators probably desired to speak upon this matter. When I relieved the Senator from Alabama [Mr. HILL] in the chair, I was advised that the Senator from West Virginia [Mr. ROSIER] desired to be recognized. At the conclusion of the remarks of the Senator from Kentucky [Mr. BARKLEY], no Senator rose to claim recognition. I sent a page to two of the Senators who had been reputed to desire the floor, to ask them if they desired to be recognized, and they said no. In that situation there was nothing for the Chair to do except to put the pending question, which was on the amendment of the Senator from Louisiana [Mr. OVERTON], as modified, which the Chair did. At that point the Senator from Louisiana [Mr. ELLENDER] suggested the absence of a quorum, and a roll call was had, at the conclusion of which, a quorum being developed, the Chair again put the question on the amendment of the Senator from Louisiana [Mr. OVERTON], as modified. On a viva voce vote only one Senator, the Senator from Utah [Mr. MURDOCK], voted in favor of the amendment offered by the Senator from Louisiana. A considerable number of Senators voted in the negative. The Chair said, "The noes seem to have it; the noes have it, and the amendment is lost."

No Senator demanded a division or the yeas and nays.

It is perfectly obvious, from what has transpired since, Mr. President, that the Senate, being in some confusion, did not properly understand the action that was being taken, and on a matter of this importance, involving not only the right of a Senator to his seat, but involving also a very large question of public policy in future senatorial proceedings, it seems to me that the Senate ought to act with a full knowledge of what it is doing, and act on the question, the very important question, which was presented by the Senator from Louisiana Therefore it seems to me, Mr. President, that, whatever may be the difference among Senators in their view as to the Overton amendment, unanimous consent should be given for a reconsideration of the vote with respect to it, upon the theory that the Senate is entitled to act with full knowledge of what it is doing.

Mr. President, if I am in order I ask unanimous consent that the vote by which the amendment of the Senator from Louisiana was defeated be reconsidered, and I say in that connection that, of course, if the vote shall not be reconsidered, the same purpose could be served by the Senator from Louisiana slightly modifying his amendment and offering it in a somewhat different form, but it seems to me that as a matter of fairness such action ought not to be necessary.

Mr. GEORGE. Mr. President, will the Senator yield?

Mr. CLARK of Missouri. I yield.

Mr. GEORGE. I ask the Senator to yield, because if I interpose an objection I wish to explain why I do so. I have already made such explanation to the Senate, but I do not think the Senator from Missouri was present when I made it. I do not think this is a case for expulsion. This is a case for exclusion or it is nothing at all. That is the position I have taken. I therefore would be compelled to object, if the Senator from Missouri asked for unanimous consent.

Mr. CLARK of Missouri. If the Senator is going to object, it is useless to ask for unanimous consent.

Mr. GEORGE. I wanted to explain my position, because identically the same question arises on the committee's amendment. One question is put in the affirmative and the other is put in the negative, so that no one's rights are lost or jeopardized. The first branch of the committee resolution is—

> *Resolved*, That the case of WILLIAM LANGER does not fall within the constitutional provisions for expulsion * * * by two-thirds vote.

That remains to be voted on, and is the next question. A separate vote will be taken on that question. and the same rights of Mr. LANGER are preserved thereby as if the vote came on the other question.

If the Senator from Missouri urges his unanimous-consent request I shall have to object to it.

Mr. CLARK of Missouri. Of course, there is no point in making the unanimous-consent request if the Senate already has notice that the Senator from Georgia intends to object, which he has a perfect right to do. Therefore I withdraw my request.

Mr. OVERTON. I ask for the yeas and nays on my motion.

The yeas and nays were ordered.

Mr. McNARY. Mr President, I interposed the motion to reconsider because of the temporary absence of the distinguished Senator from Louisiana [Mr. OVERTON]. Personally I should like to have him withdraw the motion, or permit me to withdraw it, so that we may act or the resolution offered by the committee, for I think it raises the same proposition. One branch of the resolution calls for an affirmative vote and one for a negative. It is just as easy for me to say "No" as it is "Yes," so long as I follow my conscience and my views. Inasmuch as I made the motion, unless I thereby offend the able Senator I shall withdraw it.

The VICE PRESIDENT. The yeas and nays have already been ordered, and the order cannot be rescinded except by unanimous consent.

Mr. McNARY. If the yeas and nays were ordered they were ordered very hastily when I was trying to obtain the floor. I ask unanimous consent that the order based on the motion I made, be vacated. Since I made the motion I think I am entitled to that courtesy.

The VICE PRESIDENT. Is there objection to the request of the Senator from Oregon?

Mr. OVERTON. Reserving the right to object, I wish to make a statement. I am a good soldier, and when both the majority and minority leaders combine and want me to withdraw my amendment, when both the proponents and the opponents of the resolution desire me to withdraw my amendment, I am going to do so. Therefore I hope unanimous consent will be granted to permit me to withdraw the amendment.

Mr. LUCAS. Mr. President, will the Senator yield to me for an observation?

Mr. OVERTON. I yield.

Mr. LUCAS. I make the observation for the benefit of the Senate. It was absolutely necessary for the committee, in view of the position it took, to bring in the type of resolution it did, in the negative.

Mr. McNARY. I agree to that.

Mr. President, I now renew my unanimous-consent request that the order for the yeas and nays be vacated.

The VICE PRESIDENT. Is there objection to the request of the Senator from Oregon? The Chair hears none.

Mr. McNARY. Now, Mr. President, I withdraw my motion for a reconsideration of the vote by which the Overton amendment was rejected, so that the question may stand upon the two proposals made by the committee.

The VICE PRESIDENT. Without objection, the request of the Senator from Oregon is agreed to.

Mr. OVERTON. If it be in order I ask unanimous consent to withdraw my amendment.

The VICE PRESIDENT. The amendment has already been rejected. The question now is on agreeing to the amendment offered by the Senator from Rhode Island [Mr. GREEN].

Mr. CLARK of Missouri. On that question I ask for the yeas and nays.

Mr. GEORGE. Mr. President, I wish to address myself to this motion. It narrows the issue which I wish to discuss.

The pending question is:

Resolved, That the case of WILLIAM LANGER does not fall within the constitutional provision for expulsion by two-thirds vote.

That is the sole issue now before the Senate.

I have already stated to the Senate, and I repeat, that so far as I have heard as a member of the committee or read in the record, there is nothing in this case relating to any act of misconduct on the part of WILLIAM LANGER which is even alleged to have occurred since his election to the Senate. That seems to me to dispose of this case, because if the first branch of the resolution should be voted down I do not think that the case here presented would be one for expulsion. The case made in the evidence is not one for expulsion, and the case does not proceed upon that theory.

That, of course, raises the larger question involved in this case, whether or not expulsion on the basis of acts which occurred prior to the election can be urged as a reason for the exclusion of the Senator from North Dakota from this body.

I admit that the Senate is not obliged to give any reason for expelling a Member. While we may proceed blindly and frankly on a basis of prejudice, and say that we propose to expel A or B from the Senate, nevertheless, the Senate, as a responsible legislative body, is obliged to give its reason upon such an important issue. When the reason on which the expulsion is based relates entirely to matters which occurred prior to election, in my opinion, it cannot be sustained.

The contrary view is that there can be no exclusion upon the basis of any qualification or disqualification other than the disqualifications which are enumerated in the Constitution. That view has been submitted by the able Senator from Oregon, the minority leader [Mr. MCNARY], today. It has also been submitted by the able Senator from Louisiana [Mr. OVERTON] and other Senators.

Mr. President, I wish to call attention to the language of the Constitution. If we stay by the Constitution there will not be much difficulty. If we did not try to indulge in reasoning of our own there would not be much difficulty.

First, what is the expulsion provision in the Constitution? I read it:

Each House may determine the rules of its procedings, punish its Members—

Not Members-elect; not Members-designate—

for disorderly behavior and, with the concurrence of two-thirds, expel a Member

I am aware of the fact that the able Senator from Ohio [Mr. TAFT] made a very learned argument, but the real effect of his argument is that we may expel a man before he ever becomes a Member of this body. Neither in logic nor under the Constitution can such a position be maintained.

Each House may determine the rules of its proceedings—

Relating absolutely to its internal organization, and not reaching outside of it for a moment for any purpose—

punish its Members for disorderly behavior—

Not a Member-designate or Member-elect, but only a person who has come to this body, taken the oath, and qualified without reservations and without any question of his right to a seat under the qualification clause of the Constitution—

and, with the concurrence of two-thirds, expel a Member.

Only in that instance is a two-thirds vote required. This case does not fall within it, and there is no way to make it fall within it if we wish to face the one big issue which is raised in this case.

Mr. President, I read another provision of the Constitution:

No person shall be a Senator who shall not have attained to the age of 30 years, and been 9 years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State for which he shall be chosen.

Each House shall be the judge of the elections, returns, and qualifications of its own Members, and a majority of each shall constitute a quorum to do business.

That is a clear declaration that each House shall be the judge of the elections, returns, and qualifications of its Members, followed by the express provision "and a majority of each shall constitute a quorum to do business."

Not even a majority of the Senate is required to exclude one who comes here, because a bare majority is declared to be sufficient to constitute a quorum of the Senate.

Only in one other particular is the two-thirds rule prescribed in the Constitution, and that is when the Senate sits as a court of impeachment. Then the verdict of guilty can be rendered only by a two-thirds vote. I shall not go into all the facts, but I wish to call the attention of the Senate to one particular provision in the Constitution. It is said that nothing but the qualifications prescribed in the Constitution can be looked into by the Senate. Is that the rule? Suppose Al Capone were to be appointed to the Senate. Could not the Senate stop him at the door? Could it not at any time raise the question that he is not entitled to a seat here?

The argument is made that the only qualifications of which the Senate has a right to judge are the qualifications stated in the Constitution. I read from the provision of the Constitution which affects impeachment:

Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit under the United States.

Is that one of the enumerated disqualifications? Not at all. Look at the Constitution. Remember that the Senate is a sovereign body exercising sovereign powers, with the right to determine these important questions affecting its own integrity.

Bear in mind, also, that judgment in cases of impeachment need not necessarily extend through all future time to disqualification to hold and enjoy any office of honor, trust, or profit under the United States. Suppose A has been elected to the Senate or appointed by the Governor in the case of a vacancy, and suppose that when he comes here to take his oath someone raises the question that A is really X, and that X has been impeached and cannot hold an office of honor, trust, or profit under the United States. Would we not have the power to look into the question? Would we not exercise the power? Would we say that that would be a case only for expulsion? Would we give to that kind of a man the benefit of a two-thirds vote? Would we give him any benefit? Suppose he came here under his right name but that in the State to which he had moved it had been forgotten that he had ever been impeached and debarred from holding any office of honor, trust, or profit under the United States. Suppose the people of his State knew nothing about it, but that he had made no misrepresentation. Would not the Senate have the power to protect its own integrity?

Suppose a man known to be of infamous character should come here, or suppose the Governor of a State should appoint such a man as Frank Smith. The single fact known about Frank Smith when he came here under the appointment of the Governor was that in a primary campaign he had accepted a large donation from a utility interest which came within his jurisdiction as chairman of the Commerce Commission of the State of Illinois. The special investigating committee hurriedly made its report to the Senate. The credentials were presented on the floor, and by a definite vote of the Senate the credentials were referred to the Committee on Privileges and Elections, there to lie until the Privileges and Elections Committee reported upon the case.

The last case to come before the Senate involving a question similar to the ques-

tion involved in this case was the case of Gould, a case from Maine. That case, as I recall, came before the Senate in December 1926. Mr. Gould had been elected from Maine. When he presented his credentials upon this floor the distinguished Senator, Tom Walsh, from Montana, who died soon after being appointed Attorney General by the President of the United States, and who was one of the best lawyers ever to occupy a seat in this body, rose and made the single solitary objection to Senator Gould's seating, that 14 years before his election he had been guilty of bribery, a fact which was admittedly known to the people of Maine and was discussed in the campaign.

The Senate considered the question whether to take jurisdiction. The Senate took jurisdiction, even in a case of that character, where there had been one single overt act, occurring 14 years before the election. When the committee investigated the case—and I was a member of the committee—we simply found that Senator Gould was not guilty, or that one view of the evidence exculpated him from all guilt of the charge, and therefore no other ruling was made. However, the Senate took jurisdiction of the case, permitted Senator Gould to be sworn in without prejudice—as in this case—went into the case, and looked into the facts of the case. That was the only fact involved in the case.

Mr. MURDOCK. Mr. President, will the Senator yield?

Mr. GEORGE. I have such a short time that I must beg the Senator's pardon and decline to yield at this time. If I can finish before my time has expired, I shall be glad to yield.

The Constitution does not undertake to prescribe all the qualifications of a Member of this body. By way of negative statement, which is the case wherever a power is denied to a State in the Constitution, it is said that no person shall be a Senator who shall not have attained to 30 years of age, been a citizen of the United States for a prescribed time, and an inhabitant of the State at the time of his election. That is a negative statement, a statement which directly proscribes the sending by a State of anyone to the Senate who does not meet such qualifications. Conviction for impeachment is not stated in the Constitution as a disqualification. Even under the fourteenth amendment, which provides that no person shall be a Member of the Senate or of the House who, having previously taken an oath to support the Constitution, shall have engaged in an act of rebellion, the Senate itself is given the power to waive that disqualification. The Senate may, by the vote prescribed in the Constitution, permit the seating of the Senator-elect even though he had taken an oath to support the Constitution and had subsequently engaged in a treasonable act or had given aid and comfort to the enemy. Why? Because the Constitution left to the Senate the absolute power to say who should sit here and who should not sit here—the power to say what disqualifications it would prescribe. Even when the so-called war amendments were adopted they provided that the power should remain inviolate except that the Senate would be required to take a vote before the seating of a Senator-elect who had taken an oath to support the Constitution and who subsequently had engaged in an act of disloyalty against the Government.

In the section of the Constitution from which I have read there is not stated a single disqualification which the Senate is obliged to observe. That section constitutes a clear limitation on the power of the State itself. Mr. President, why is that so? It is so for this reason: When its framers wrote the Constitution and when the people of the United States adopted it, they knew very well what a parliamentary body was; they knew very well what the House of Commons and the House of Lords were. They had derived their jurisprudence from England. They were thoroughly familiar with what the House of Commons, the legislative branch of the English Government, could do. It has been the rule since time immemorial that the House of Commons could inquire into the qualifications, or the election returns, of any member who came to that body. That power was clearly and definitely reviewed and reasserted in the Wilkes case. It was known to those who framed our Constitution. What happened? The legislative power of this Government was vested in the Congress of the United States, and then the Congress was created, consisting of two Houses. To the Congress was given specially delegated powers and all other powers that arise by necessary implication from the powers granted; and the moment that a government, a sovereign government, is set up, is called into existence, and the legislative power of that sovereign is vested alone in a legislative branch of that government, under a constitution, there is no limitation on either House of that Congress with respect to its own members, save the limitations and restrictions which are written into that constitution; because in the case of absolute sovereignty the sovereign had a right not only to make the laws but to execute the laws and to interpret the laws. Under the English system, the power to make the laws was vested in a parliamentary body. The framers of our Constitution followed the pattern, created a parliamentary body, and gave it full sovereign power over everything placed within its jurisdiction, save as limited in the Constitution.

Oh, I know very well that, in theory, at least, the Federal Government is not an absolute sovereign. It exercises within the field of legislation only such powers as are expressly delegated or by necessary implication are implied from the powers granted; but with respect to the legislative powers granted, whatever they were, whether to control interstate commerce or to do any other thing which the Congress has from the beginning done, the Congress stands as a sovereign legislative body with the full power of the sovereign to say who shall sit here, and to meet at the door everyone who comes to it demanding a seat. After a Senator-elect has been seated, with no charges of substance against him relating to things which occurred long prior to the time before he became a Member of the Congress, then, of course, the Constitution does provide for expulsion by two-thirds vote. It does not matter when the motion is made to exclude a Senator; it does not matter whether it is made when the Senator-elect presents himself or thereafter. In the orderly course of things, it might well be made when the Senator-elect presents himself; but to make such a requirement would be to do violence to another constitutional provision of great and perhaps higher dignity; that is, to deny to the State equal representation by having two Members in the Senate at all times—a right of which a State cannot be deprived, save by its own consent.

So the practice has grown up of permitting a Senator-elect or a Senator-designate to come into this body if he has credentials, regular on their face, and to take his seat without prejudice, if there are then pending objections to his qualifications, and to permit the qualifications to be examined later. It is simply a rule of expediency, simply a practical determination of a question, but having due consideration to the right of every State to have two representatives in this body.

The same thing is true when a Senator-elect comes here with credentials regular on their face and is met by a contestant. The contestant files his contest. The contestee, the Senator-elect, or Senator-designate, always is permitted, so far as I know, to take his seat.

He may sit here for 6 months or a year before the contest is finally decided. Everything he does is done of right as a de facto Senator, at least. Nothing that he does by his own single vote as a majority of one can be questioned anywhere, because he is a Senator sitting here. If later it should be determined that he was not in fact duly elected at the time of the election, although he may have been here 1 year or 2 years, or if it should appear that either as a result of accident, fraud, or mistake, he was not duly elected, of course he would then go out; and the contestant himself would come in and would be seated in his stead. So the logical question arises there.

The sole question in this case—and it is the question in every case—is not in what form the motion arises, not at what time the motion arises, but what is the substance of the motion. If the motion questions the qualifications or the election or the returns of a Senator-elect, it is a motion to exclude him, and on that motion only a majority vote of the Senate is necessary. If it relates to anything done after his election, anything occuring after the time he becomes a Member of this body, then the motion is to expel him, although the act complained of may be of a character exactly similar, one of a kind, to the act which was committed perhaps 2 years before the election on which a motion is made to exclude.

It may be said that after one is elected the Senate has jurisdiction of him. I deny it. There is no reason for saying that it has jurisdiction of him. So far as expelling him is concerned, it may have some kinds of jurisdiction, but, until one is elected or appointed and comes here to take the oath of office, he

may decline the office; he may give it up at the last minute; he may not come when his term commences; he may remain away from here; and, if he does, the only rightful power of the Senate is to declare his office vacant and to proceed to have it filled up as the Constitution prescribes.

When he comes and elects to take the office and takes the oath and takes his seat, if there is not raised then or thereafter the question of his election or his qualifications, he can be deprived of his membership in this body only by expulsion, which requires a two-thirds vote. If his election is involved, if fraud, accident, or mistake can be shown to account for his presence here, although nobody raises the question for months and months after he comes into this body, it can be raised whenever the fact is known or when any one desires to raise it. That, however, does not involve this case.

When Mr. LANGER came here he was met with objections to his qualifications; long petitions were on the desk; the majority leader, perhaps after conference with some of the friends of Senator LANGER—I do not know—permitted him to be sworn in without prejudice to his right to insist upon all his rights, and without prejudice to the Senate to take whatever action thereafter appeared proper in his case.

So, Mr. President, I think that resolution No. 1 should be voted in the affirmative, and I so think regardless of what may be done in the further resolution as to permitting Senator LANGER to retain his seat. I think it infinitely more important that the Senate not publish to mankind that it lacks either the courage or the wisdom to meet an issue head on, face to face, and that it protect its integrity by excluding from this body not only those who are not 30 years of age, who have not been citizens 9 years, who were not inhabitants of the State from which they were elected; not only those who have been convicted of treason and deprived of the right to hold office; not only those who hold other offices of trust under the Constitution of the United States; not only those who, having taken an oath to support the Constitution have levied war against the Government of the United States, but for any other reason which can injure the integrity of the Senate itself. Do not do that, gentlemen. Whether you seat Senator LANGER is another question. It is infinitely more important that the Senate of the United States retain its power and assert its power.

Someone has been worried about the lack of power in the Congress of the United States to prescribe any other disqualifications. Why worry about that? Certainly there is no power in the Congress of the United States to prescribe any other disqualification, because not the Congress of the United States, not the President of the United States, not the Supreme Court of the United States, but each House of the Congress is the judge of the elections, returns and qualifications of its own Members. Nobody can encroach upon that power; but the way to lose it is to be timorous in asserting it.

Mr. CONNALLY. Mr. President, the Senator from Georgia [Mr. GEORGE] always makes able and well-considered addresses; I admire his great legal ability, and were this case to be decided upon our respective merits, I should not dare to draw my sword.

I agree with the Senator from Georgia that the Senate of the United States ought to retain whatever power it possesses with respect to the admission to and the expulsion of Members from this body, but I do not agree to the theory that the Senate has the authority to treat with indifference the distinction between exclusion and expulsion.

Mr. President, we are faced here today with four parties to this proceeding: The Senate of the United States, the Senator from North Dakota, who is the prisoner, as it were, at the bar, the State which elected him, and the Constitution of the United States. I hope in the very few minutes I shall devote to this matter to undertake to harmonize and give to each of the respective parties the proper jurisdiction which they possess.

Mr. President, my view of this matter is that when a candidate for the Senate approaches the door of the Senate with an abstract of title from his constituency, covering all the requirements as set forth in the Constitution of the United States, the Senate may not reject him, but must expel him if there is any cause for his not remaining in this Chamber.

What is the issue here today? The issue is not a matter of punishment; the Senate is not a court to inflict punishment upon Senator LANGER for what he did 20 years ago; but the Senate is sitting here to protect itself alone. The courts are the proper tribunal to inflict punishment. We have no right to say that we are going to punish Senator LANGER. We can only put him out of this body, on the theory that he was corrupt 20 years ago and he is still corrupt, and, being corrupt now at this moment, he is in danger of corrupting the Senate of the United States, or of depreciating the dignity of the Senate of the United States. If he has been cleansed, if he has been forgiven, if he has been given a bath of immunity, and is now pure, why should we exclude him?

The Senator from Georgia referred to the case of Al Capone. If Al Capone should be legally elected a Member of the United States Senate, and possessed the qualifications, we could expel him the moment he came through that door; but, suppose Al Capone had become purified, that he had become a Christian, and the Senator from Georgia knew that he was pure, that he was honorable, that he intended to do the right thing—there is no power on earth that would sanction his exclusion on the ground that he committed an offense 25 years ago.

Mr. President, Senator LANGER appears here. What does the Constitution say as to the title he shall have? The Constitution of the United States uses negative language; and I think there was a reason for the use of negative language. The Constitution of the United States says that no State shall send a Senator here unless he has been 9 years a citizen of the United States; unless he is an inhabitant of the State from which he comes, and unless he is 30 years of age. Those are prohibitions or limitations. By inference it clearly appears, to my mind, at least, that the States may send whomever they please, but whoever they send must, at least possess those qualifications. It cannot be said that the Constitution makers did not think about that subject.

Let us see what is the background of the Constitution of the United States. First there was the Continental Congress, to which each colony sent whomever it pleased, without any restrictions whatever upon its right by the central body. Then, under the Articles of Confederation—and I hold them in my hand—each State had a right to send such delegates as it might determine and select. There was no restriction, no limitation; they were recognizing the freedom of the States. But when they got into the Constitutional Convention, with this sort of a background, and knowing that the States and the Colonies had a right to send whom they might please, there were those who said, "Wait a moment. We want to protect against those not native-born, not 9 years citizens, and not inhabitants of the State. We want no rotten boroughs," and they laid down these qualifications.

There are those who say the qualifications are not exclusive. Why are they not exclusive? We are now meeting in the constitutional convention, let us say, in this Chamber, and some Senator proposes the qualifications which are now set forth in the Constitution. Can it be supposed that if this body wanted any other qualifications some Senator would not arise and say, "Mr. President, wait a minute. I am going to offer an amendment." We have many amendments here. Amendments were offered in the convention. If the framers of the Constitution had intended that the Senate on the one hand or the Congress on the other had the power to say that there should be other qualifications, why did they not say, "or such other qualifications as either House may prescribe," or, "such other qualifications as the Congress may prescribe"? All through the Constitution we find that kind of provision. They laid down certain things and then added, "or as may be provided by law," or "as one House may determine."

It did occur to the members of the Convention to add other qualifications. Mr. Pinckney, of South Carolina, who had originally offered a complete draft of the Constitution, proposed that another qualification be added. The original draft of the Constitution provided that—

> The legislature of the United States shall have authority to establish such uniform qualifications of the Members of each House, with regard to property, as to the said legislature shall seem expedient.

Senators now say that, though that was rejected in the Constitutional Convention, if the Senate desires we can exclude a Member because he does not possess a sufficient amount of property. That is their theory, that we can add anything we desire. But what happened to the proposal in the Convention?

Mr. Gouverneur Morris, who was politically more or less of an aristocrat, who held the Tory view of things political, proposed to go beyond that. He wanted to strike out "with regard to property," in order to leave the legislature entirely free to act. In other words, Mr. Gouverneur Morris proposed in the Convention itself that, in addition to the grounds we now have in the Constitution, the legislature might be entirely free to prescribe other qualifications. That is what those opposed to Mr. LANGER say we have the power to do. Yet when it came to the test, old James Madison, who knew more about the making of the Constitution than any other man there—and I glory in him; he came from the same Commonwealth now represented in part by the distinguished Senator on my right, the senior Senator from Virginia [Mr. GLASS]—James Madison opposed these amendments, and he said:

Mr. MADISON. The qualifications of elector and elected were fundamental articles in a republican government and ought to be fixed by the Constitution. If the legislature could regulate those of either, it can by degrees subvert the Constitution.

In other words, Madison said, "If you let the Senate determine any qualifications it may see fit, it may subvert the Constitution of the United States. If you permit the House to determine in the first instance the qualifications of its Members," Mr. Madison said, "you may subvert the Constitution of the United States."

I submit these sayings of wise men, men sitting in the Convention, men breathing its spirit, surrounded with the patriotism and the determination of the other leaders to make a government, to preserve democracy, to secure the rights of the States; I set those opinions against some of those we have heard uttered on this floor in recent days.

Mr. President, after hearing Madison, after hearing Pinckney, after hearing Gouverneur Morris, the Convention voted to refuse the Senate the right to add property qualifications. When they refused to permit the Senate to add that qualification they voted down the power to add any other kind of a qualification, and they thereby denied to this body and to the House of Representatives the right to impose any additional qualifications, save those set forth in the Constitution of the United States.

Has the Congress of the United States recognized that principle? Senators will recall that in the fourteenth amendment, which was a constitutional act, the qualifications as to membership in this body were further amended by the provision that no one who had ever participated in rebellion or armed resistance to the Government could serve as a Member of the Senate save by a two-thirds vote of immunity.

If we could have accomplished that without the Constitution being amended, why was it not done? If the legislature could have done that by statute, why did they not do it? They said, "No; we cannot exclude members from this body because they participated in rebellion, save by amending the Constitution of the United States itself." When they adopted that amendment they thereby by inference excluded every other specification, save alone that of participation in rebellion.

My fellow Senators, these are elemental truths, according to my mind. We do not have to read a great number of lawbooks. We have brains, we have minds. We are the ones to be guided by the Constitution in this instance. We have a right to judge what this language means and what the precedents mean.

Mr. President, what is the philosophy behind all this? I think there is a philosophy which some Senators have overlooked. Why have two routes for getting Members out of this body? One is exclusion at the door, exclusion at any time. It does not make any difference whether one takes the oath or not; according to my view, it does not change the situation at all that he takes the oath. A year after he has been in the Senate, if we should decide that he was never legally elected, he goes out, because he never was a Senator de jure to start with. That was the situation in the Smith and Vare cases. Those cases are not comparable with the instant case. We decided in the Smith and Vare cases that neither of those men was ever legally elected, because he polluted the stream, he corrupted the ballot, and the poison permeated the whole election, vitiated it all, and he never was a Senator at all, he never acquired title, he did not come here with an abstract of title, he came here with grimy and corrupt hands, freshly stained with corruption upon them, and that corruption was responsible for his apparent election. The Senate said, "You never were a Senator. You were not a Senator when you stood at the door." If I am correct, that is the theory of the Senator from Oregon. That is what those cases decided.

But in the case of Senator LANGER, not a voice is lifted to say that he was not legally elected. Oh, it is true that the Senator from Vermont [Mr. AUSTIN] yesterday said that while he was elected, we had a petition here from the people of North Dakota. How many of the people of North Dakota? Is a nondescript minority the people of North Dakota? If the people of North Dakota have any complaint in this case, their forum is the ballot box, and not the Senate of the United States.

North Dakota is a sovereign State. It may control the qualifications of its electors. It may control the election of and the conduct of its candidates. If crime is committed in North Dakota, it has the sovereign power to punish the criminal through the courts. The people of North Dakota, in the most solemn referendum free government knows, went to the ballot box and elected this man Senator, it elected him twice before that as Governor, it elected him twice before that as attorney general, and it does not lie in the mouths of a handful of disappointed and vanquished antagonists to come here now and say, "We cannot convince the people of North Dakota, who know, him, the people of North Dakota, who are familiar with his life, the people of North Dakota, who have mulled over his political record and the charges against him for 25 years. We cannot trust them to pass on his morality. We want a committee of Congress, the members of which have not attended the sessions, we want the Senate, half the Members of which do not hear the debate, to pass on this case, and give us the Senator we want. True, we were licked in the election. It is true that the charges were broadcast on every stump in North Dakota, and it is true that Mr. Lempke went about the State discussing the bond transaction and the land transaction. Every voter in North Dakota who could read or hear knew about it. But we want the Senate, in its purity and its wisdom, to rewrite the verdict, and give us a Senator we want."

What is that old reference about those English characters, the tailors of Tooley Street? Three tailors met in Tooley Street in London on one occasion and solemnly drew a petition to be presented to Parliament, which began, "We, the people of England." We find here a handful of complainants, who do not represent the people of North Dakota. And while I am on the subject of North Dakota, let me say that it has courts, it has Governors, it has a Governor now who is an enemy of the Senator from North Dakota. The present Governor of that State was elected on a platform pledging, "If you will elect me I will clean up this bond transaction, I will ferret out LANGER, and I will have him prosecuted and have him punished. I will appoint an investigator who will go to the bottom, one Mr. Duffy, and we will drag forth into the clear light of heaven all these impurities and these crimes."

Has there been a single indictment? Not even in a justice of the peace court. Has there been an indictment in the district court? Not one. Has there been a legislative committee which has ferreted these things out and condemned the Senator from North Dakota?

Why do not the people of North Dakota, of whom the Senator from Vermont speaks, assemble in North Dakota, instead of in Washington, and have the grand jury convene and act upon these charges? Why did they not sit down on the steps of the mansion of this Governor, who during election is strong for purity and after election gets cold feet because he fears he cannot deliver? Why do not the people of North Dakota get the North Dakota authorities to act? They want the Senate of the United States to act. I suppose they think we have played everybody else's game here and that we might as well play theirs. [Laughter.]

Mr. President, my contention is that there is bound to be some reason for these two philosophies as to expulsion and rejection. The men who framed the Constitution were not engaged in playing battledore and shuttlecock; they were engaged in endeavoring to foresee difficulties and to provide methods of dealing with them. So they provided two methods in respect to this difficulty. They are bound to have different bases, but if we were to follow the majority we would not need to have provision for expulsion of some person, except after he had come here; then he might be

expelled. Their theory is that if a person committed a crime last August the Senate can punish him for it. They call it punishment, but it is not punishment at all. We are not engaged in punishment. It is punishment enough for the poor victim, but for the rest of us it is not punishment. It is said we can punish a man for a crime committed last August by a majority vote.

After he comes into the Senate it is contended that the man can commit the same crime right here on the very altars of the Senate—it ought to be a greater offense to commit the crime in the Senate than to do so before he came here and he may have repented before he came here—but if he commits a crime after he comes into the Senate then they say, "Oh, it takes a two-thirds vote to act." "Why did you not throw another man out last month for committing a crime last August, the same crime?" "Yes." "Well, this fellow committed the same crime in the Senate. He shook his fist in the face of the Vice President and said, 'To hell with the Senate, I will do as I please,' and he committed a crime. He hit a man over the head with a stick; he assaulted him." But the majority say, "Now, wait a minute, we are trying to preserve the purity of the Senate. You cannot throw him out except by a two-thirds vote."

Mr. President, my contention is that if the issue involves any one of the four points, whether the man is a resident of the State, whether he has been a citizen for 9 years, whether he has borne arms against the Republic, or the other qualifications, it is an issue of fact. Those qualification are plainly set down. We have a right to determine those questions by a majority vote just like we determine every other question by a majority vote. If he is an objectionable character, if he is currupt, if he is a criminal, of course, we can throw him out. We can throw him out the first day he comes here. But we would have to throw him out by the process of expulsion. There is a reason for that provision. In the other case, where it is purely a finding of fact, it requires only a majority vote. But in the case of expulsion it contains more than simply a question of fact.

The Senate cannot probe into a man's heart. It involves the question of discretion, whether we will expel him or not. Being a question purely of discretion and of will, the makers of the Constitution said:

> We will require in such a case a two-thirds vote. We do not want a narrow partisan majority of one to expel a man from the Senate of the United States.

It is true the Senate may expel him for anything. The Members of the Senate may expel him because they do not like him. They may expel him because he is not a new dealer. They may expel him because he is a new dealer. They may expel him because he does not have the right kind of a mustache. They may expel him on any ground they want to, and they can expel LANGER right now on any ground they want to, but it must be done by a two-thirds vote.

The framers of the Constitution felt that action involving the free and unhampered will of the Senate must have some bridle placed upon it; that it must have some limitation placed upon it; that it shall not be the plaything of the passion of an hour or the impulse, or prejudice of Senators who might act tonight, and change their minds tomorrow. Therefore they said, "We will not permit the Senate to expel a man except by a two-thirds vote." Is not that a sound principle?

Mr. President, I have only 5 minutes left; I have a monitor who pulls my coat and tells me I have only 5 minutes left. I can but briefly refer to the other matters. The only reason the Senate can expel this man or put him out of here now is because he is corrupt right now. If he was a cattle thief 20 years ago Senators must believe he is a cattle thief now, and if they do they can throw him out by a two-thirds vote. If they believe he was a bribe taker 20 years ago they must believe he is a bribe taker now, and therefore is apt to corrupt the Senate. But when they do, they must throw him out by a two-thirds vote. The crime committed is a continuing one. If he was corrupt 20 years ago Senators must believe he has been corrupt all the intervening time, and that he comes into the Senate now corrupt, and being corrupt, the Senate has a right to put him out. Is there no period of forgiveness? Can the Senate not act as He acted in dealing with the accusation against the woman in the Bible, and sent her away and said, "Sin no more"? Oh, no, Mr. President, the Medes and the Persians say that principle cannot be invoked. They say that because Mr. LANGER stole a drug store as was charged in North Dakota, the Senate should stop him at the door by a majority vote.

We may expel for any cause. The Constitution does not add "or such other qualifications as either House may provide." The Constitution was founded upon the theory of the Confederation and the Continental Congress. The framers tried to carry forward into the new Constitution the fundamentals of the theories of those bodies. The Convention was called, not for the purpose of making a new Constitution, but to modify and to amend the Articles of Confederation. These negative limitations, to my mind, excluded every other limitation except those which were named, and Madison made it clear that as finally drafted the Constitution says just what we contend it says—only that the States, when they do elect, must elect one having these qualifications.

I now wish to speak of the issue of fact. Senators remember the Albert Gallatin case, which came up on the question as to whether he had been 9 years a citizen of the United States. The Senate tried that case. It was tried on an issue of fact. Senators remember the Holt case. In that case it was contended that Holt was not 30 years of age when his term began. We had a right to pass on that case by a majority vote, because in that case it was not a question of expelling him. We were trying him on the question of one of the links in his abstract of title, and not on the ground that he was corrupt.

If the power of adding to the qualification was to be given to any body by the Constitution, why did not the Constitution so provide? In another place it said that the Senate shall be the judge of its Members' qualifications. The framers of the Constitution could very easily have said right there, if they had wanted to, that "The Senate shall add to the qualifications here set out." But they did not do so. The Constitution provides that the Senate can judge of the qualifications of our Members. The Constitution says, "judge." It does not say that we can create new qualifications. If the framers of the Constitution had meant to say that we can create new qualifications, I think Mr. Madison knew enough about the English language to have said, "create qualifications." But the language of the Constitution is "to judge." What do Senators think of a judge who tries to make laws? A judge does not create any law, he does not enact any statutes. He judges the facts that are brought to him. He passes judgment on what is already laid down in the books. And when the Senate judges, it judges the fact whether a man has been 9 years a citizen, or whether he is 30 years of age, or whether he has borne arms against the Government. When the Senate judges it simply finds that the man is 30 years old, as we did in the Holt case, as the Senate did in the Gallatin case when it passed on the question as to whether he was 9 years a citizen of the United States.

When it comes to this larger question of expulsion, that is an act of self-defense, that is a saving clause which the makers of the Constitution inserted in the document, giving us the widest latitude, the widest possible power, but bridling that power, arresting that power, clothing it with caution, giving something of patience, by providing that though you can expel him for anything on earth, you can only expel him by a two-thirds vote. That is the case here. You have a perfect right—I would not say "right"—but a perfect power to expel the Senator from North Dakota because he wears a blue suit, if you want to, but when you do, you have got to do it by a two-thirds vote. You cannot expel him at the door because he wears a blue suit, because the Constitution does not require him to wear a blue suit, and it does not deny him the right to wear a blue suit. It simply says that if he is a resident of his State, if he has been legally and honestly elected, and if he has been 9 years a citizen, and is 30 years of age, he is a Senator-elect, and there is no power on God's green earth that can make him anything but a Senator, except this body, by expulsion. I do not think there is anything in the doctrine that we have to wait until after he comes in the door. I think if he committed a crime a week before he came here, the power of the

Senate is absolute and we could expel him.

In closing, let me say that, in my opinion, the facts in this case do not meet any judicial test. Senator LANGER is clothed with the cloak of innocence. He wears the badge of innocence until the presumption of innocence is overcome. I challenge any Senator to read the record and find convincing evidence which would convict Senator LANGER of any of these charges were we to pass upon the charges themselves.

Mr. CHANDLER. Mr. President, when this case came to the Senate the distinguished Senator from Texas [Mr. CONNALLY] was chairman of the Committee on Privileges and Elections. He reported to the Senate a resolution which was unanimously adopted by the Senate. That resolution instructed the Committee on Privileges and Elections to examine into certain charges filed, not by the committee or by any other Member of the Senate, but by the people of North Dakota, questioning the right of Senator LANGER to a seat in the Senate.

Pursuant to that resolution the committee, for a year and 3 months, has undertaken to do what the Senate authorized and instructed it by resolution to do. During the discussion of the preliminary phases of the question, before it had been definitely determined what course the committee should pursue, the Senator from Texas said to the committee:

> I think that we have the naked power to exclude anybody just because we do not like the color of his eyes; but I think under the precedents we would not have any authority to go further than the issues that affect his character.

So far as I know and have been informed, no charge has been made against the character or conduct of Senator LANGER since he became a Member of the Senate.

Mr. LUCAS. Mr. President, will the Senator yield?

Mr. CHANDLER. I yield.

Mr. LUCAS. Will the Senator repeat the statement which he read? I did not quite catch it all.

Mr. CHANDLER. The chairman of the committee said:

> I do not quite agree with Senator HATCH. I think that we have the naked power to exclude anybody just because we do not like the color of his eyes; but I think under the precedents we would not have any authority to go further than the issues that affect his character.

Mr. LUCAS. As I understand, the chairman of the committee was the distinguished Senator from Texas [Mr. CONNALLY].

Mr. CHANDLER. That is correct.

Mr. CONNALLY. Mr. President, will the Senator yield?

Mr. CHANDLER. I yield.

Mr. CONNALLY. The Senator from Illinois knew that when he heard the statement first read.

Mr. CHANDLER. In answer to a question by the Senator from Rhode Island [Mr. GREEN] the chairman said:

> The CHAIRMAN Awhile ago I said that I thought it was our duty to investigate the charges. I did not mean by that that if we thought that the charges were frivolous or were not worthy of considering that we had to go into those facts. We can just disregard them, but as to such charges as we should find raise an issue that goes to the title of the Senator, we will have to go into, regardless.

It has been said here by some members of the committee and by other Members of the Senate that the Senate Committee on Privileges and Elections undertook to punish Senator LANGER, and that we went out of our way to get up charges against him. During the first few days of debate I thought the committee, and not the Senator from North Dakota, was on trial. On the opening day of the session when the Senator from North Dakota presented himself the statement was made by the majority leader, and not objected to by any Senator, that by a majority vote we could say to the Senator from North Dakota, "You stop at the door." That was the substance of it. However, he said:

> The better practice in such cases seems to have been to allow the Senator-elect to take the oath without prejudice, which means without prejudice to him and without prejudice to the Senate.

Then a discussion ensued between the Senator from Kentucky [Mr. BARKLEY] and the Senator from Vermont [Mr. AUSTIN], and the Vice President said that the Parliamentarian had advised him that if the Senator should come in and take his seat, then the question of his qualifications could be determined by a majority vote of the Members of the Senate present at the time the vote was taken.

Mr. President, I have not tried this case on technicalities. I have tried it on the record; and on the record it is my opinion that no Senator can justify to his people, if the issue is raised in his State, a vote to condone the conduct charged—and in my opinion proved—in this case.

Mr. MURDOCK. Mr. President, will the Senator yield?

Mr. CHANDLER. Mr. President, I decline to yield. My time is limited. The Senator from Utah consumed a week. I do not wish to engage in a discussion with him. I wish to finish my own remarks.

I tried the case on the record—not on any technicality, but on the facts presented to the members of the committee—as to whether Senator LANGER was guilty of the serious charges made against him by the people of North Dakota.

It has been said that the people of North Dakota knew about the charges and passed on them, because they were issues in the election in North Dakota. If the people of North Dakota did pass on them as issues, they decided those issues adversely to the Senator from North Dakota, because in a three-cornered race Senator LANGER received 100,000 votes; Lemke received 92,000; and a third candidate received 69,000. Together the other two candidates received 161,000 votes, and Senator LANGER received 100,000. He was elected by a minority of the voters of North Dakota in that election.

Let us see briefly what the charges are. When I undertook the case I had nothing against the Senator from North Dakota. I have nothing against him now. I wish I could have been saved service on the committee, or having to vote. I can never be persuaded to vote on another such case if it is conducted in the way in which this one has been conducted. If in the future a Senator-elect comes to the Senate with charges brought against him by the people of his own State, my opinion is that we will not get the Committee on Privileges and Elections, under a resolution of the Senate, to investigate the charges if the Senate is to say later that it has no jurisdiction and that the investigation should not have been made.

Let us see what happened. The committee voted 14 to 2 to assume jurisdiction. If I am not incorrectly informed, the Senator from Texas voted, along with 13 other members, that we had jurisdiction over this case and that we ought to proceed to investigate and reach a decision. Then the committee voted 14 to 2 that the case must be considered by the Senate under its constitutional and inherent obligation to examine the qualifications of its Members; and if I am not incorrectly informed the Senator from Texas voted for that proposition.

Finally, the committee divided 13 to 3 on the resolution—

> *Resolved*, That WILLIAM LANGER is not entitled to be a Senator of the United States from the State of North Dakota.

I wish to give my reason for the decision which I have reached. I dislike to vote on the question whether one of my fellow Senators has the right to sit in the Senate. Personally I have no objection to him. If I had my wish in the matter I would wish that the charges were never brought, and that he did not have to answer. So far he has not answered to the Senate, and his explanations before the committee were not satisfactory.

What are the charges? The first charge is that he and his associates tried to bribe or buy a Federal judge. To my mind that is a most serious charge. It is said that he did not do it; but he paid the money. It is said that he did not buy the judge; but he tried to do so. He and his agents tried to influence the judge to direct a verdict in a case in which he was charged with conspiracy in his own State. There is a rule of law that even if he did not do it himself, if he did it through his agents he was responsible. The Latin maxim is, "Qui facit per alium facit per se." What a man does through his agents or representatives he does himself. He did pay money to the judge's son, who was a weakling. It is said that the son did not try to influence his father. I do not know whether he did or not, but he talked about it. Then he said, "I do not think I can do much about the fixing business. I do not think, from a physical standpoint, it is a possibility that I can fix the old man." To the old man's credit, I do not think he did, but he tried; and we must either believe that $525 was paid in an attempt to bribe the judge, or we must be foolish enough to believe that Mr. LANGER's agents paid the judge's son $525 to go to his father and tell him that a banquet was to be held in his honor when he came to North Dakota. Senators may believe that if they wish to do so. I do not believe it.

Senator LANGER took $2,000 from a widow to obtain a pardon for her son, who was in the penitentiary. He never believed that he could obtain the pardon, and never tried to obtain it; but when she sued to try to recover the money, the prisoner in the penitentiary was punished until his mother was persuaded to withdraw the suit. That is another charge which is unexplained. I cannot account for it.

It is said that the people of North Dakota are responsible for Senator LANGER. They are; but if I should vote for him I should get in the same bed with him, and accept my responsibility for him from now on. I am not willing to do it.

It is said that he sold stock to a railroad lawyer by the name of Sullivan. Sullivan is a distinguished, brilliant, and successful business man. He speculates and deals in securities and stocks; but the record shows that he bought $25,000 worth of stock without receiving the stock. So far as I know he never asked for it. It was worthless. Senator LANGER never turned the stock over to him. Nobody knows where it is now. Mr. LANGER was asked, "Where is it, Senator?" He replied, "I do not know. I wish I knew." It was not delivered. It was not transferred. It was of no value; yet Sullivan, the representative of the Great Northern Railroad, paid the Governor of North Dakota, who was chairman of the commission which supervised the rates of assessment of that railroad company in North Dakota, $25,000 for nothing. Mr. LANGER got the money. Sullivan got nothing. Sullivan has been highly successful in business, but not by conducting his business in that way. No man ever made money by conducting his business the way Sullivan conducted this transaction. The railroad company's assessment was decreased the first year, and the second year it was increased $3,000,000. The contract for the stock was entered into on the 27th day of May 1937; and just before the board met to consider the assessment of the railroad company Mr. LANGER demanded and got the balance of the money—some twelve thousand dollars—from Sullivan on the worthless stock.

Let us see what he did with the money. He owed the Northwestern Mutual Life Insurance Co. on loans on his insurance. He did not put the check into the bank. He endorsed it and sent it to the insurance company, to pay his debt, and asked the insurance company to send him the balance, which it did. The balance was $4,000.

Then he sold land to Brunk. I do not know when my friend the junior Senator from Utah changed his mind, but he changed it at some time, because when we were talking about that transaction he said, "This is an irrational deal; this is an irresponsible sort of proposition." Brunk said, in reply, "Yes, sir; it is." He said, "If my good Scotch wife did not understand why I paid $56,800 for land which the appraisers said was worth $5,600, I cannot expect Senators to understand it."

The junior Senator from Utah did not understand it then. No one else understood it. Fifty-six thousand and eight hundred dollars was paid for land which, according to the appraisers, was worth $5,600; and Mr. LANGER got the money. What did Brunk and Brewer get? They were bond dealers living in Iowa. They were friends of Mr. LANGER. Brewer did not like the transaction, but Brunk wanted to help Mr. LANGER. He helped him unwisely, and not so well. He admitted wanting to contribute to him in some way. Mr. LANGER got this money.

Let us see what the bond brokers got. In 1937 and 1938 they took some $297,000 from the little counties in North Dakota, from the hard-working Scandinavian farmers in North Dakota. The Bank of North Dakota financed the transactions, and the counties could not do business except with the bond syndicate, because the Governor had the power to veto transactions. In 1937 and 1938, according to the books of Brewer and Brunk, they collected on county bonds bought from the North Dakota counties, and they were the only ones who could deal with the counties, because if anyone else tried to do so the Governor could put him out of office; and in one case he did put such a person out of office because he attempted to deal with someone else.

According to the books, they got some $297,000 from those North Dakota counties, from the poor, hard-working Swedes, Poles, Icelanders, Norwegians, and Danes. I have known some of them for 22 years. I have played baseball with them. They are frugal, thrifty, and hard working; but they could not sell their bonds except at a discount. The bank of North Dakota financed the transactions for the Governor, and Brunk and Brewer collected the money. The only thing that we can see in that transaction is that Brunk and Brewer were "kicking back" to the Governor of North Dakota $56,800.

In my opinion, it is impossible for a Governor to deal with a lobbyist for a railroad company and with bond dealers, collect $25,000 for worthless stock, collect $56,800 for land of the value of $5,600, and still be conducting the affairs of his State according to decent, honest administration. In my opinion that is impossible.

I have disregarded the fact that he "took a drug store." He did take a drug store; he took it, and took the house with it, and locked all of it up. It is said that he did not "take the jail." He did; he broke into the jail, got the keys, and scuffled with the deputy sheriff. He did all those things. He called out the militia. As the Senator from Delaware [Mr. TUNNELL] said, he hid in a shanty in the woods in order to evade process servers after he had called out the militia and declared martial law when he was ousted as Governor.

It is not contended that he has committed any such acts since he became a Senator; but it is contended that he performed the acts as a public official. No justification or excuse for such acts has been shown by him or by anyone who appeared for him or who testified for him.

It is not contended that they constituted decent, honest conduct of the affairs of the people of North Dakota.

The responsibility of voting for him is the Senate's. On the record I cannot vote for him. I have reached the decision which I have reached on the record, not on any technicality. I do not believe that he has any more right to a seat in the Senate than he had on the day when he appeared at the door of the Senate and we said, through the majority leader of the Senate, "Come in and sit down without prejudice to you, and without prejudice to the Senate, and we shall examine the charges." My colleague, the majority leader, said, "The charges are serious, but we shall examine them."

The Senate adopted a resolution instructing the Committee on Privileges and Elections to examine the charges; the Senate told us that we could examine them ourselves, by a subcommittee, or through investigators. We chose the latter course, because we did not want to send Senators to North Dakota on a junket, to stir up the people there. We handled the matter in the best way we could, without prejudice to Mr. LANGER. We had the investigators go quietly to the State of North Dakota and ask the people there for the truth about the whole thing. The people were surprised at some of the transactions, because they had not known about them before.

Mr. STEWART. Mr. President, will the Senator yield?

Mr. CHANDLER. I yield.

Mr. STEWART. I ask the Senator to yield for just a moment; I do not want to encroach on his time.

A moment ago the Senator spoke about Senator LANGER receiving $25,000 from Brunk, in a deal for land which Brunk never had seen. The junior Senator from Kentucky said there was a mortgage on the land. I believe the record shows that there was a mortgage of $25,000 on the land. The amount of outstanding unpaid taxes and the amount of the mortgage were to be deducted from the $56,800. The whole amount was paid Senator LANGER, and he, in turn, was to pay the mortgage and the taxes.

Mr. CHANDLER. Oh, yes.

Mr. STEWART. Does the Senator know whether the mortgage and the taxes have in fact been paid?

Mr. CHANDLER. So far as I know, they have never been paid.

Mr. LUCAS. Mr. President, will the Senator yield?

Mr. CHANDLER. I yield.

Mr. LUCAS. I do not know anything about the mortgage; but the testimony specifically shows that when the hearings were being held, after we appointed the appraisers, one being a title examiner from Minneapolis, Minn., with 14 years' experience in the examination of titles, not a single dime of taxes had ever been paid upon a single acre of the land which was bought by Brunk during 1936 and 1937. When the title examiner made his investigation, the taxes alone on that

land were more than what the appraisers found to be the equitable value in the land.

Mr. CHANDLER. The Senator's statement is accurate.

I desire to conclude by saying that it is a serious matter to be called upon to vote against the right of a fellow-citizen to occupy a seat in the Senate. I wish I had not been placed in this position, and I wish I had not been a member of the committee. I hope I shall not have to be a member of such a committee in the future when cases of this sort are considered. The task is highly distasteful. However, a member of the committee has an obligation to do what the Senate directs the committee to do. We were directed to find out whether the charges were true. In this case, in my opinion, the charges against the Governor of North Dakota have been proved. If the Senate wants to keep him here in spite of the charges, I am powerless. If we could have kept him out on the opening day by a majority vote, I think it is foolish to let him come in and then require a two-thirds vote in order to get him out. The Senate will be confronted with such situations as long as its legislative life continues.

My opinion is that, for the reasons stated, we cannot justify allowing Mr. LANGER to retain a seat in the Senate. His supporters have stayed away from the record. That is not unusual for lawyers who try cases. If the facts are with them, they stick to the facts; if the law is with them, they stick to the law; and if neither is with them they tell funny stories. [Laughter.]

It has been stated that the Senate should not attempt to conduct a trial. I admit that there are better things than a Senate trial; but under the Constitution of the United States the Senate is the judge of the qualifications of its own Members. I do not think that means that the Senate shall consider only how old a Senator-elect is, what State he lives in, how long he has been a resident of the State, and whether he is a citizen of the United States. I do not think the Constitutional provision means only that. If it does, the Senate does not need a Committee on Privileges and Elections; each election year the Senate can appoint a special committee to find out whether a Senator-elect is a citizen of the United States, whether he is old enough to be in the Senate, and whether he has been living in his State long enough to qualify.

The statement has been made that when charges similar to those made against Senator LANGER—which I think it is admitted have been proved—are made against a Senator-elect, the Senate may refuse to admit him by a majority vote, but that if he is allowed to take his seat pending investigation he may thereafter be excluded only by a two-thirds majority. I do not believe that is the law of the United States. I am not willing to dodge by such a technicality the issues presented by the charges which have been made in the pending case. On the record and the facts which have been presented by the people of North Dakota, and not on the basis of any technicality, in my opinion, these serious charges have been proved against the Senator from North Dakota so fairly that I think, under the circumstances, he is not entitled to a seat in the Senate.

It has been said, "Send him back to North Dakota, and the people will elect him again." I have no objection to that; but the Senate has the responsibility of passing on the charges which have been presented; and if on this record the Senator is allowed to retain his seat, the Senate will be called upon to justify its vote.

Mr. President, faced with that responsibility I must vote with the majority of the committee, and say that under the circumstances the Senator from North Dakota is not entitled to retain his seat.

Mr. CHAVEZ. Mr. President, it was not my purpose to discuss the pending question, and I should not do so now except for certain remarks made toward the conclusion of the address by the junior Senator from Kentucky, to the effect that some of the supporters of Senator LANGER have not come to his defense.

Some time ago I took it upon myself to make some inquiries of persons who I thought would be impartial in the matter of passing judgment on the character of Senator LANGER. I did not write to persons in political life; I did not write to businessmen who might have some axes to grind. I took it upon myself to write to some clergymen in the State of North Dakota whom I did not know but who, I thought, possibly could give me some information that would assist me at least in passing judgment on the character of the Senator from North Dakota, without having my judgment interfered with by the information or testimony of someone who might have an ax to grind on matters of politics. I wrote to the Reverend C. F. Strutz, of the North Dakota Conference of the Evangelical Church. He answered as follows:

NORTH DAKOTA CONFERENCE
OF THE EVANGELICAL CHURCH,
January 6, 1942.

Hon. DENNIS CHAVEZ,
Member, United States Senate,
Washington, D. C.

DEAR SENATOR: Your inquiry regarding the personal character of Senator WILLIAM A. LANGER at hand, and in response would say: (1) That I am not now and never have been in politics except as any public-spirited citizen is interested in clean politics and public welfare; (2) that I have not always favored the policies of Senator LANGER and have even opposed him at times, sharply criticizing some of his actions; especially did I disapprove of some of his associates who have now turned against him.

I think I can honestly say, therefore, that I am not prejudiced in his favor, but having said this, I want to add that I have known Mr. LANGER since the spring of 1918, when I came to Bismarck, and have had dealings with him at different times in various ways since then and have always found him fair, honest, courteous, and helpful.

He has always been the friend and champion of the downtrodden and oppressed. He has many faults, but I am speaking my honest convictions when I say that I believe he stands much higher in moral character than many of his political foes who desire to bring about his expulsion. He has many fine personal qualities of character, and I know that his family life is beautifully affectionate.

I believe it would not only be a disgrace to expel him but a tragedy as well, for I honestly think he would represent our State ably and effectively if given a fair chance.

I have confidence that our Senate will rise above the petty politics of small politicians and give the Senator and the people of North Dakota a square deal by voting to seat their chosen representative.

Very truly yours,

C. F. STRUTZ.

Mr. President, along the same line a clergyman by the name of Seibel, in answer to a letter, wrote me from Bowdon, N. Dak., as follows:

BOWDON, N. DAK., *January 5, 1942.*

Mr. DENNIS CHAVEZ,
United States Senator,
United States Senate,
Washington, D. C.

Hon. Senator CHAVEZ: I just received your very important letter and now I have opportunity to write to some honest soul in the Senate concerning the pending case against Senator WILLIAM LANGER

I shall answer this letter as though I were standing before the courts of the most high for men will have to give account for every word they speak.

I am acquainted with Senator LANGER personally for a good many years. Prior to our acquaintance I heard many questionable stories about Mr. LANGER, so that my opinion of him was of inferior quality. But how different I have found him to be.

I first met Mr. LANGER when he was attorney general of North Dakota. In later years he became Governor of this State, and he proved to me that he was the poor people's friend and sympathetic feeling toward the aged, crippled, orphans, and widows. His favoritism toward these unfortunate ones gave him many enemies among the capitalists In spite of the fact that a great deal of money is spent to impeach Senator LANGER, the people who voted for Mr. LANGER into this honorable position are hoping they will not succeed in doing this.

During the years 1937 and 1938 it was my privilege to become more closely associated with Mr. LANGER as Governor of this State, while I served as a member on the State Pardon Board. Here I had the opportunity to work with him. I observed him closely and found him to be a gentleman in every way. During his term of office he saved the farmers millions of dollars by placing an embargo on grain and a moratorium on real estate and personal property. Many poor people's homes were saved in this way and the wealthy fear that he will continue to favor the poor while serving as Senator. The people still have the same confidence in him that they had when they voted for him. Should he be impeached and sent home, I feel sure that he will again return to the Senate by the vote of the common people.

Hoping that the Almighty will guide in this so important matter is the wishes of your humble servant. I remain,

Sincerely yours,

J. H. SEIBEL.

I have a letter from a former justice of the Supreme Court of the State of North Dakota, who, I believe, would be most anxious to punish anyone who was guilty. His letter is as follows:

GRAND FORKS, N. DAK., *February 28, 1942.*

Hon. DENNIS CHAVEZ,
United States Senator,
Washington, D. C.

MY DEAR SENATOR: It will not be denied that North Dakota is entitled to be represented in the United States Senate. I desire to say a favorable word for WILLIAM LANGER,

our United States Senator from North Dakota.

It is my understanding that the Committee on Elections and Privileges seeks to disqualify our Senator from North Dakota upon the ground, generally speaking, that he is not morally fit to hold the office.

This action, if exercised, will have the effect of removing Senator LANGER from his office as United States Senator, and virtually will amount to his impeachment by the United States Senate without trial, and without those usual rights being accorded to a Senator which are recognized as fundamental in any criminal trial of a defendant for committing any crime.

Senator LANGER already has been our Senator from North Dakota with a recognized seat in your body now for over 1 year. He is not charged with the commission of any crime, and is not on trial before the United States Senate for treason, bribery, or any other high misdemeanor as specified in our Constitution providing for removal of civil officers of the United States. Already Senator LANGER has heretofore had his trial in North Dakota before our Federal court for the commission of a Federal offense, and after trial in the ordinary course of law, he has been found innocent, so that his record before your body is that of a man who is innocent of a Federal offense upon which he was charged and tried before our Federal court in our State.

I have known Senator LANGER practically since his boyhood This dates from the time when, as a student, he took law from me when I was instructor on real property at the University Law School of North Dakota.

I know personal charges have ofttimes been hurled at Senator LANGER in his campaigns, but in spite of such political charges the voters have repeatedly elected him to offices such as attorney general for two terms, and as Governor of our State for two terms.

Senator LANGER and his outstanding family have been a credit and honor to our State, and I do not think there is any question that the moral conduct of Senator LANGER has been anything but most exemplary.

In 1917 and 1918 the undersigned was first assistant attorney general, serving as such in the office of the attorney general at Bismarck, N. Dak In 1918 the undersigned was elected as associate justice of our supreme court, and later became chief justice of our supreme court, from which office he voluntarily retired in the year 1924 to engage in the practice of law at Grand Forks, N. Dak. At this time he is now president of the State Bar Association of North Dakota for the ensuing year.

During all the years that I have been acquainted with Senator LANGER I have been impressed with his sincerity of purpose and with the high native ability he possesses. There are many times when I have disagreed with his policies. There can be little question but that Senator LANGER possesses the personal ability to serve well as representative from North Dakota in the United States Senate. Personally, I know that for a great many years Senator LANGER has been a great friend of the poor and distressed. He believes in a fair deal for everyone.

In the first World War he made a fine record in support of our Government. It is my belief that in the existing war emergency now confronting us, Senator LANGER will become a strong supporter of our Government and its activities, as we all must be, and should be, in order that this present war be won and our democracy preserved for us.

I simply request your careful consideration of the subject matter of qualifications of our Senator WILLIAM LANGER to continue as our Senator from North Dakota. I have faith in the fairness and justice of the United States Senate which you, as a Member, do honor.

I beg to remain,

Respectfully yours,

HARRISON A. BRONSON.

The PRESIDING OFFICER (Mr. MCFARLAND in the chair). The time of the Senator from New Mexico has expired.

The question is on the amendment of the Senator from Rhode Island [Mr. GREEN] to the first resolving clause of Senate Resolution 220.

Mr. MURDOCK. A parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. MURDOCK. If the Senate votes down the amendment proposed by the Senator from Rhode Island [Mr. GREEN] to the original resolution, which, as I understand, would indicate that a majority of the Senators favor expulsion by two-thirds rather than exclusion by a majority, would we not then be in the same position in which we were before the amendment was voted on at all, and would we not then be called upon to vote on the original resolution as now drafted, which again presents the very same question?

The PRESIDING OFFICER. On the first provision of it because heretofore, upon request of the Senator from Rhode Island, the two branches of the resolution were separated

Mr. MURDOCK. I understand that, but my question is, if we vote down the amendment of the Senator from Rhode Island [Mr. GREEN], which of course would indicate that the Senate insists on a two-thirds vote to expel Senator LANGER would we not then be called upon to vote on the question again under the original resolution?

The PRESIDING OFFICER. On the first provision of it; yes.

Mr. MURDOCK I am wondering, Mr. President, why we could not by unanimous consent substitute the amendment of the Senator from Rhode Island [Mr. GREEN] under the first resolve in the resolution, so that after the one vote on that the matter of the two-thirds vote would be settled.

Mr. OVERTON. A parliamentary inquiry.

The VICE PRESIDENT. The Senator will state it.

Mr. OVERTON. If we vote in favor of the pending amendment offered by the Senator from Rhode Island [Mr. GREEN], then a majority vote may exclude the Senator from North Dakota. Is that correct?

The VICE PRESIDENT. That is correct.

Mr. OVERTON. If, upon the other hand, we vote down the amendment of the Senator from Rhode Island, it will then require a two-thirds vote to unseat Mr. LANGER.

The VICE PRESIDENT. In that case, the vote would recur on the provision of the original resolution.

Mr. OVERTON. And that would require a two-thirds vote to unseat.

Mr. TAFT. Mr. President, if the Senator will yield, it seems to me that the effect of voting down the Green amendment would be to restore lines 1 to 5 of the original resolution, which comes back to the same thing as the Green amendment. I agree with the Senator from Utah that the proper procedure is to get unanimous consent for the Senator from Rhode Island in effect to amend the first branch of the resolution before we vote on it, and get that in the form in which he wants it to be, then let us vote on that, the first paragraph, then divide the question and vote on the second paragraph.

Mr. BARKLEY. Mr. President, I have thought all along, and have so expressed myself privately, that there was no need in the beginning to have these two resolutions yoked up together as one. The simplest plan would be to vote on the Green proposition as an independent motion, not simply as a substitute for some language in the committee resolution, because the object of voting on two propositions which are separate is in order that there may not have to be a vote on either one of them again. When we vote on one, by that vote we settle the question. In order to do that, it would be necessary to strike out the first part of the committee resolution altogether, and vote on the amendment as an independent motion, which would settle the question of two-thirds or a majority, and then, based upon that determination, we would vote on the question of exclusion or expulsion. That could only be done by offering this amendment as an independent proposal, and not simply as a substitute for the first part of the resolution.

Mr. MURDOCK. Mr. President, will the Senator yield?

Mr. BARKLEY. I yield.

Mr. MURDOCK. The purpose the Senator wants to achieve is exactly the same as mine. Once we vote on the question of a majority or two-thirds, it will be settled, and we will not again have to recur to it.

Mr. BARKLEY. I do not see any need of voting twice on the question whether it is to be a majority or a two-thirds vote. If we adopt the Green amendment, we simply substitute it for the first part of the committee resolution, and then we have to vote on the committee resolution as a whole, and we will again be voting on the question of two-thirds or a majority hooked up with the question whether Mr. LANGER shall be seated. It is entirely conceivable that Senators may vote for or against seating the Senator who would vote the other way on this particular proposition, and the two should not be tied together.

Mr. CONNALLY. Mr. President, will the Senator from Kentucky yield?

Mr. BARKLEY. I yield.

Mr. CONNALLY. Could not the Senator from Kentucky obviate that difficulty by a unanimous-consent agreement that the Green amendment shall be accepted as to section 1, and that then the Senate shall take a separate vote?

Mr. BARKLEY. Yes; that could be done; in other words, by unanimous consent we could eliminate the first part of

the committee resolution and substitute the proposed amendment for it.

Mr. CONNALLY. That is the point.

Mr. BARKLEY. And then vote separately on this proposal.

Mr. CONNALLY. But there must be a severance if we are to vote separately.

Mr. CLARK of Missouri. Mr. President, will the Senator from Kentucky yield?

Mr. BARKLEY. I yield.

Mr. CLARK of Missouri. While I do not think the Green amendment, if adopted, would be efficacious, it is certainly designed to determine the question of the vote on the second part of the resolution—that WILLIAM LANGER is not entitled to his seat. In other words, if the Green amendment should be adopted, it would then be claimed that that is determinative of the question whether the second resolve requires a majority or two-thirds vote.

Mr. BARKLEY. That is true. Of course, that is what we are trying to settle now—whether, in voting on the second part of the resolution, the Senate shall decide the question by two-thirds or a majority. These two proposals could have been brought in by the committee as separate resolutions. It was not necessary to join them. They could have been offered separately.

Mr. CLARK of Missouri. I understand that thoroughly, but they were joined together because the committee thought they would make themselves stronger.

Mr. BARKLEY. I do not know about that.

Mr. CLARK of Missouri. Now they are trying to separate them because they do not think it makes them stronger.

Mr. BARKLEY. The committee was following a precedent in a previous case in joining the two parts.

Mr. LA FOLLETTE. Mr. President, the question has already been decided, and is not now at issue. It seems to me that assuming that the amendment offered by the Senator from Rhode Island on March 23 represents the majority view of the Committee on Privileges and Elections, we could resolve this parliamentary complication by the Senator from Rhode Island asking unanimous consent to modify the committee's resolution, in the first resolve, in the terms of his amendment offered on March 23. Then, under the provision for a division, we would vote on the modified resolution first.

Mr. BARKLEY. That can be done, but the point was raised that even after passing on the first part of the resolution, determining whether a majority or two-thirds was required, we would have a vote on the last resolution, which would in effect be voting again on that part of it.

The VICE PRESIDENT. No decision having yet been arrived at, the Senator from Rhode Island has the right, on behalf of the committee, to modify the resolution.

Mr. GREEN. Mr. President, as I made the report for the committee, there were two parts to the resolution. First, I offered an amendment in the form of a substitute for the original resolution, and asked that the two parts of it be voted on separately. The latter request was forthwith agreed to, so it is already agreed that the two parts shall be voted on separately.

The VICE PRESIDENT. Does the Senator desire to modify the first provision?

Mr. GREEN. I am perfectly willing to, if that will make it easier. I understood that had already been done.

Mr. BARKLEY. If the Senator will permit, I suggest that he has the right to modify his original resolution.

Mr. GREEN. Certainly.

Mr. BARKLEY. It would simplify it merely to strike out of the original resolution all down to and including line 5, and substitute the three lines in his amended resolution for that part, and that would be what we would have a separate vote on.

Mr. GREEN. That was my original proposition.

Mr. BARKLEY. No; the Senator offered it in the form of an amendment.

Mr. GREEN. I ask unanimous consent to make the modification myself.

The VICE PRESIDENT. The Senator does not have to ask unanimous consent; he has the right to make the modification.

Mr. GREEN. I do make that modification, then.

The VICE PRESIDENT. In that case, the question is on the first provision as modified.

The VICE PRESIDENT. Without objection, the amendment offered by the Senator from Louisiana [Mr. OVERTON], as modified, in the nature of a substitute for Senate Resolution 220, will be withdrawn.

Mr. CONNALLY. Mr. President, I desire to say to the Senator from Kentucky that it is with the distinct understanding that we have a right to ask for a division.

Mr. BARKLEY. That has already been granted.

Mr. McNARY. A parliamentary inquiry.

The VICE PRESIDENT. The Senator will state it.

Mr. McNARY. I had worked that out with the aid of the Parliamentarian in what I thought was a simpler form, but I shall not propose it, inasmuch as there has been so much controversy, and now, accepting the present proposal, do I understand that it reads—

Resolved, That the case of WILLIAM LANGER does not fall within the constitutional provisions for expulsion by a two-thirds vote?

That would be the first vote, and a vote in favor of requiring a two-thirds vote should be "No." Is that correct?

The VICE PRESIDENT. The Senator is inquiring as to whether a majority vote would determine?

Mr. McNARY. I am asking if a majority should vote "no" on the pending motion, would a two-thirds vote then be required to expel the Senator from North Dakota? Is that the interpretation?

The VICE PRESIDENT. The Chair would prefer to submit that question to the Parliamentarian.

Mr. BARKLEY. It seems to me it is obvious that the Senator's inquiry must be answered in the affirmative. If we vote down a resolution which says the case does not fall within the two-thirds provision, then, of course, that vote automatically results in the fact that it does require two-thirds. So a vote "nay" on this resolution is a vote for two-thirds. A vote "yea" is a vote to determine the matter by a majority.

The VICE PRESIDENT. That seems obvious.

Mr. LA FOLLETTE. I ask that the resolution upon which we are now about to vote may be stated by the reading clerk.

The VICE PRESIDENT. The clerk will read.

The legislative clerk read as follows:

Resolved, That the case of WILLIAM LANGER does not fall within the constitutional provisions for expulsion by a two-thirds vote.

Mr. McNARY. Mr. President, renewing my inquiry, and finally, I put it this way, if in my opinion it requires more than a majority vote, my vote will be "no"?

The VICE PRESIDENT. That is correct.

Mr. ELLENDER. I suggest the absence of a quorum.

The VICE PRESIDENT. The clerk will call the roll.

The legislative clerk called the roll, and the following Senators answered to their names:

Aiken	Gillette	O'Mahoney
Andrews	Glass	Overton
Austin	Green	Pepper
Bailey	Guffey	Radcliffe
Ball	Gurney	Reed
Bankhead	Hayden	Reynolds
Barbour	Herring	Rosier
Barkley	Hill	Russell
Bone	Holman	Schwartz
Brewster	Hughes	Shipstead
Brooks	Johnson, Calif.	Smith
Brown	Johnson, Colo.	Spencer
Bulow	Kilgore	Stewart
Burton	La Follette	Taft
Butler	Langer	Thomas, Idaho
Byrd	Lee	Thomas, Okla.
Capper	Lucas	Thomas, Utah
Caraway	McCarran	Tobey
Chandler	McFarland	Truman
Chavez	McKellar	Tunnell
Clark, Idaho	McNary	Vandenberg
Clark, Mo.	Maloney	Van Nuys
Connally	Maybank	Walsh
Danaher	Mead	Wheeler
Davis	Millikin	White
Doxey	Murdock	Wiley
Ellender	Murray	Willis
George	Nye	
Gerry	O'Daniel	

The VICE PRESIDENT. Eighty-five Senators having answered to their names, a quorum is present.

Mr. LA FOLLETTE. Mr. President, from private conversation with a number of Senators I have come to the conclusion that there is still confusion with regard to the effect of this vote, and therefore I propound the following parliamentary inquiry: If a majority of the Senate should vote in the affirmative upon the pending question, would it then require a majority vote only to exclude Senator LANGER from his seat?

The VICE PRESIDENT. That is correct. An affirmative vote means that a majority vote may exclude.

Mr. LA FOLLETTE. And if a majority of the Senate votes in the negative on the pending question, it then follows that a two-thirds vote will be required to exclude the Senator from North Dakota; is that correct?

The VICE PRESIDENT. That is correct.

Mr. BANKHEAD. A parliamentary inquiry.

The VICE PRESIDENT. The Senator will state it.

Mr. BANKHEAD. This question, of course, is evidently complicated and has confused a number of Senators. I wish to know if the question could not be put straight before the Senate by a resolution providing that Senator LANGER is entitled to his seat in the Senate as a Senator from North Dakota. If so, it would simplify the situation. It would then not be divided into the two questions, whether we shall vote under a two-thirds rule or a majority rule, but it would give the Senate the opportunity to determine in an affirmative way, if the majority feels that way, that Senator LANGER is entitled to his seat, and would negative the proposal for a two-thirds vote. It would settle both questions in one vote. If I can get unanimous consent, I should like to have it.

The VICE PRESIDENT. The Senator from Alabama has requested unanimous consent——

Mr. BANKHEAD. Do I need unanimous consent? Would not a substitute be in order to the effect that Senator LANGER is entitled to his seat?

Mr. LUCAS. I am constrained to object, because we have gone all over the parliamentary situation, and I believe everyone understands it.

Mr. BANKHEAD. I withdraw my request.

The VICE PRESIDENT. The yeas and nays have been ordered. The clerk will call the roll.

The Chief Clerk proceeded to call the roll.

Mr. GLASS (when his name was called). I have a general pair with the junior Senator from Massachusetts [Mr. LODGE]. I transfer that pair to the senior Senator from Maryland [Mr. TYDINGS] and vote. I vote "yea." I am not informed how the Senator from Massachusetts or the Senator from Maryland would vote if present.

Mr. KILGORE (when his name was called). I have a pair with the senior Senator from Nebraska [Mr. NORRIS]. I transfer that pair to the Senator from New Mexico [Mr. HATCH], who, I am informed, if present and voting, would vote "yea," and will vote. I vote "yea."

Mr. McNARY (when Mr. NORRIS' name was called). I announce that the Senator from Nebraska [Mr. NORRIS] is absent because of illness. If he were present, he would vote "nay" on this question.

Mr. REED (when his name was called). I have a general pair with the senior Senator from New York [Mr. WAGNER]. I am informed that the Senator from New York is willing that I be released from that pair on this vote. Therefore, I will vote. I vote "yea."

Mr. THOMAS of Utah (when his name was called). I have a general pair with the senior Senator from New Hampshire [Mr. BRIDGES] who is still ill and confined to the hospital. If I were at liberty to vote, I should vote "nay", and if the Senator from New Hampshire were present he would vote "yea."

Mr. HILL. I announce that the Senator from New Mexico [Mr. HATCH] is absent from the Senate because of illness.

The Senator from California [Mr. DOWNEY] and the Senator from Washington [Mr. WALLGREN] are holding hearings in western States on matters pertaining to national defense.

The Senator from Mississippi [Mr. BILBO], the Senator from Nevada [Mr. BUNKER], the Senator from New Jersey [Mr. SMATHERS], and the Senator from New York [Mr. WAGNER] are necessarily absent.

The Senator from Maryland [Mr. TYDINGS] has been called to his home State on important public business.

The Senator from Mississippi [Mr. BILBO] is paired with the Senator from New Jersey [Mr. SMATHERS]. I am advised that if present and voting, the Senator from Mississippi would vote "yea", and the Senator from New Jersey would vote "nay."

The result was announced—yeas 37, nays 45, as follows:

YEAS—37

Andrews	George	Murray
Austin	Gillette	O'Mahoney
Ball	Glass	Pepper
Bankhead	Green	Radcliffe
Barbour	Guffey	Reed
Barkley	Gurney	Russell
Bulow	Hayden	Stewart
Burton	Hughes	Truman
Butler	Kilgore	Tunnell
Byrd	Lee	Van Nuys
Caraway	Lucas	Wiley
Chandler	Maybank	
Doxey	Mead	

NAYS—45

Aiken	Herring	Reynolds
Bailey	Hill	Rosier
Bone	Holman	Schwartz
Brewster	Johnson, Calif.	Shipstead
Brooks	Johnson, Colo.	Smith
Brown	La Follette	Spencer
Capper	McCarran	Taft
Chavez	McFarland	Thomas, Idaho
Clark, Idaho	McKellar	Thomas, Okla.
Clark, Mo.	McNary	Tobey
Connally	Maloney	Vandenberg
Danaher	Millikin	Walsh
Davis	Murdock	Wheeler
Ellender	O'Daniel	White
Gerry	Overton	Willis

NOT VOTING—14

Bilbo	Langer	Thomas, Utah
Bridges	Lodge	Tydings
Bunker	Norris	Wagner
Downey	Nye	Wallgren
Hatch	Smathers	

So the first branch of the committee resolution was rejected.

The VICE PRESIDENT. The question now is on the second branch of the resolution, which will be read for the information of the Senate.

The legislative clerk read as follows:

Resolved, That WILLIAM LANGER is not entitled to be a Senator of the United States from the State of North Dakota.

Mr. SMITH. Mr. President, a parliamentary inquiry.

The VICE PRESIDENT. The Senator will state it.

Mr. SMITH. Is a two-thirds vote necessary on this question?

The VICE PRESIDENT. The resolution as it reads is merely:

Resolved, That WILLIAM LANGER is not entitled to be a Senator of the United States from the State of North Dakota.

Mr. McNARY. Mr. President, a parliamentary inquiry.

The VICE PRESIDENT. The Senator will state it.

Mr. McNARY. As I understand, Senators who are of the view that Senator LANGER is entitled to a seat should vote "nay"?

The VICE PRESIDENT. That is correct.

Mr. MURDOCK. I ask for the yeas and nays.

The yeas and nays were ordered.

Mr. JOHNSON of California. Mr. President, as I understood the Senator from Kentucky, he held that, if we should adopt the first part of the resolution, automatically the judgment would be rendered.

Mr. BARKLEY. No. I said that if the first part of the resolution were agreed to, then automatically that would result in a majority vote only being necessary; but if it were defeated, automatically a two-thirds vote would be required on the second part of the resolution.

Mr. CLARK of Missouri. Mr. President, I move as an amendment to Senate resolution 220, in line 6, to strike out the word "not."

The VICE PRESIDENT. The question is on agreeing to the amendment offered by the Senator from Missouri.

The amendment was agreed to.

Mr. BARKLEY. Mr. President, that changes the nature of the vote. The answer to the inquiry of the Senator from Oregon is now reversed.

The VICE PRESIDENT. That is correct.

Mr. BARKLEY. Senators who desire to seat Senator LANGER should now vote "yea," and those who desire not to seat him should vote "nay."

Mr. CLARK of Missouri. Mr. President, a parliamentary inquiry.

The VICE PRESIDENT. The Senator will state it.

Mr. CLARK of Missouri. As I understand, my amendment has been disposed of.

The VICE PRESIDENT. The amendment has been disposed of. The Senator from Kentucky is merely clearing the minds of Senators with regard to the statement made by the Senator from Oregon [Mr. McNARY].

Mr. TAFT. Mr. President, I move that the vote by which the amendment offered by the Senator from Missouri was agreed to be reconsidered. It seems to me that this is a resolution to expel, which requires a two-thirds vote; and if we turn it around and declare that he is entitled to a seat, how are we to know what percentage of the vote will be required? It seems to me that the language of the resolution to expel must be in accordance with the Constitution. That is why I move that the vote by which the amendment offered by the Senator from Missouri was agreed to be reconsidered.

Mr. CLARK of Missouri. Mr. President, so far as I am concerned, I agree with the suggestion of the Senator from Ohio. I shall vote for the motion to reconsider.

The VICE PRESIDENT. The question is on agreeing to the motion of the Senator from Ohio [Mr. TAFT] to reconsider the vote by which the amendment

offered by the Senator from Missouri [Mr. CLARK] was agreed to.

The motion was agreed to.

Mr. CLARK of Missouri. Mr. President, I withdraw my amendment.

Mr. McNARY. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. McNARY. As I understand, the answer to my inquiry is now the same as that originally given by the Chair, that is, that those who desire that Senator LANGER be seated should now vote "nay."

The VICE PRESIDENT. That is correct; those who desire that Senator LANGER be seated should vote "nay."

The question now is on the second branch of the resolution. On this question the yeas and nays have been ordered, and the clerk will call the roll.

The Chief Clerk proceeded to call the roll.

Mr. GLASS (when his name was called). I have a general pair with the junior Senator from Massachusetts [Mr. LODGE]. I am not advised how he would vote if he were present. I transfer that pair to the Senator from Maryland [Mr. TYDINGS] and will vote. I vote "yea." I am not advised how the Senator from Maryland would vote if he were present.

Mr. KILGORE (when his name was called). I have a pair with the Senator from Nebraska [Mr. NORRIS]. I transfer that pair to the Senator from New Mexico [Mr. HATCH] who, I am informed, if present and voting, would vote "yea," and will vote. I vote "yea."

The roll call was concluded.

Mr. THOMAS of Utah. I have a general pair with the senior Senator from New Hampshire [Mr. BRIDGES], who, if he were present, would vote "yea." If I were at liberty to vote I should vote "nay."

Mr. McNARY. Referring to my former statement concerning the absence of the senior Senator from Nebraska [Mr. NORRIS], if he were present he would vote "nay."

Mr. HILL. I announce that the Senator from New Mexico [Mr. HATCH] is absent from the Senate because of illness.

The Senator from California [Mr. DOWNEY] and the Senator from Washington [Mr. WALLGREN] are holding hearings in Western States on matters pertaining to national defense.

The Senator from Mississippi [Mr. BILBO], the Senator from Nevada [Mr. BUNKER], the Senator from New Jersey [Mr. SMATHERS], and the Senator from New York [Mr. WAGNER] are necessarily absent.

The Senator from Maryland [Mr. TYDINGS] has been called to his home State on important public business.

The Senator from Mississippi [Mr. BILBO] is paired with the Senator from New Jersey [Mr. SMATHERS]. I am advised that if present and voting, the Senator from Mississippi would vote "nay," and the Senator from New Jersey would vote "yea."

The result was announced—yeas 30, nays 52, as follows:

YEAS—30

Andrews	Barkley	Caraway
Austin	Burton	Chandler
Ball	Butler	Doxey
Barbour	Byrd	George
Glass	Lucas	Reed
Green	Maloney	Stewart
Guffey	Maybank	Truman
Gurney	Mead	Tunnell
Kilgore	Murray	Vandenberg
Lee	O'Mahoney	Wiley

NAYS—52

Aiken	Hayden	Reynolds
Bailey	Herring	Rosier
Bankhead	Hill	Russell
Bone	Holman	Schwartz
Brewster	Hughes	Shipstead
Brooks	Johnson, Calif.	Smith
Brown	Johnson, Colo.	Spencer
Bulow	La Follette	Taft
Capper	McCarran	Thomas, Idaho
Chavez	McFarland	Thomas, Okla.
Clark, Idaho	McKellar	Tobey
Clark, Mo.	McNary	Van Nuys
Connally	Millikin	Walsh
Danaher	Murdock	Wheeler
Davis	O'Daniel	White
Ellender	Overton	Willis
Gerry	Pepper	
Gillette	Radcliffe	

NOT VOTING—14

Bilbo	Langer	Thomas, Utah
Bridges	Lodge	Tydings
Bunker	Norris	Wagner
Downey	Nye	Wallgren
Hatch	Smathers	

So the second branch of the resolution—Senate Resolution 220—was rejected.

Mr. CONNALLY. Mr. President, I move that the vote by which the resolution was rejected be reconsidered.

Mr. McNARY. I move that the motion of the Senator from Texas to reconsider be laid on the table.

The VICE PRESIDENT. The question is on agreeing to the motion of the Senator from Oregon to lay on the table the motion of the Senator from Texas to reconsider the vote by which the resolution was rejected.

The motion to lay on the table was agreed to.

PROVISION OF HOUSING IN CONNECTION WITH NATIONAL DEFENSE

The VICE PRESIDENT laid before the Senate a message from the House of Representatives announcing its disagreement to the amendments of the Senate to the bill (H. R. 6483) to amend the act entitled "An act to expedite the provision of housing in connection with national defense, and for other purposes," approved October 14, 1940, as amended, and requesting a conference with the Senate on the disagreeing votes of the two Houses thereon.

Mr. ELLENDER. I move that the Senate insist upon its amendments, agree to the request of the House for a conference, and that the Chair appoint the conferees on the part of the Senate.

The motion was agreed to; and the Vice President appointed Mr. ELLENDER, Mr. PEPPER, Mr. CHAVEZ, Mr. LA FOLLETTE, and Mr. TAFT conferees on the part of the Senate.

APPROPRIATIONS FOR CIVIL FUNCTIONS OF WAR DEPARTMENT—CONFERENCE REPORT

Mr. THOMAS of Oklahoma submitted the following report:

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H. R. 6736) making appropriations for the fiscal year ending June 30, 1943, for civil functions administered by the War Department, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendments of the Senate numbered 1 and 3, and agree to the same.

Amendment numbered 4: That the House recede from its disagreement to the amendment of the Senate numbered 4, and agree to the same with an amendment, as follows: In lieu of the matter stricken out and inserted by said amendment, insert the following: "without the specific approval of the Secretary of War"; and the Senate agree to the same.

The committee of conference report in disagreement amendment numbered 2.

ELMER THOMAS,
CARL HAYDEN,
JOHN H. OVERTON,
RICHARD B. RUSSELL,
JOSIAH W. BAILEY,
Managers on the part of the Senate.

J. BUELL SNYDER,
D. D. TERRY,
JOE STARNES,
ROSS A. COLLINS,
GEORGE MAHON,
D. LANE POWERS,
ALBERT J. ENGEL,
FRANCIS CASE,
Managers on the part of the House.

The report was agreed to.

The Vice President laid before the Senate a message from the House of Representatives, which was read, as follows:

IN THE HOUSE OF REPRESENTATIVES,
March 27, 1942.

Resolved, That the House insist upon its disagreement to the amendment of the Senate numbered 2 to the bill (H. R. 6736) making appropriations for the fiscal year ending June 30, 1943, for civil functions administered by the War Department, and for other purposes.

Mr. THOMAS of Oklahoma. I move that the Senate further insist on its amendment numbered 2, now in disagreement, request a further conference with the House thereon, and that the Chair appoint the conferees on the part of the Senate.

The motion was agreed to; and the Vice President appointed Mr. THOMAS of Oklahoma, Mr. HAYDEN, Mr. OVERTON, Mr. RUSSELL, Mr. BAILEY, Mr. REYNOLDS, Mr. BRIDGES, and Mr. LODGE conferees on the part of the Senate at the further conference.

Mr. BROWN. Mr. President, let me ask the Senator from Oklahoma if the appropriation carries the item for the Soo Locks.

Mr. THOMAS of Oklahoma. The conference report is on the War Department civil-functions bill. The House and Senate have reached an agreement with respect to all amendments except one, which is in disagreement, and the Senate has just ordred it referred to a further conference.

Mr. BROWN. What item is in disagreement?

Mr. THOMAS of Oklahoma. The amendment known as number 2, which covers, I think, six items. However, the item in which the Senator from Michigan is interested has been agreed to.

Mr. BROWN. I thank the Senator.

MRS. EDDIE A. SCHNEIDER—CONFERENCE REPORT

Mr. BROWN submitted the following report:

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H. R. 5290) for the relief of Mrs. Eddie A. Schneider, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate, and agree to the same with an amendment, as follows: In lieu of the figures "$5,000" insert "$7,500"; and the Senate agree to the same.

PRENTISS M. BROWN,
ALLEN J. ELLENDER,
ARTHUR CAPPER,
Managers on the part of the Senate.

DAN R. MCGEHEE,
EUGENE J. KEOGH,
Managers on the part of the House.

The report was agreed to.

ESTATE OF MRS. EDNA B. CROOK—CONFERENCE REPORT

Mr. BROWN submitted the following report:

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H. R. 4557) for the relief of the estate of Mrs Edna B. Crook, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate, and agree to the same.

PRENTISS M. BROWN,
LLOYD SPENCER,
ARTHUR CAPPER,
Managers on the part of the Senate.

DAN R. MCGEHEE,
EUGENE J. KEOGH,
Managers on the part of the House.

The report was agreed to.

STRIKES IN WAR PRODUCTION PLANTS AND FREEZING OF LABOR CONDITIONS

Mr. CONNALLY. Mr. President, as soon as I can secure a favorable opportunity, it is my purpose to move that the Senate proceed to the consideration of Senate bill 2054, a bill introduced by me, reported favorably by the Committee on the Judiciary, and now on the calendar, relating to strikes and the freezing of labor conditions.

EXECUTIVE SESSION

Mr. BARKLEY. Mr. President, I move that the Senate proceed to the consideration of executive business.

The motion was agreed to; and the Senate proceeded to the consideration of executive business.

EXECUTIVE MESSAGE REFERRED

The VICE PRESIDENT laid before the Senate a message from the President of the United States, submitting several nominations in the Army, which was referred to the Committee on Military Affairs.

(For nominations this day received, see the end of Senate proceedings.)

EXECUTIVE REPORTS OF COMMITTEES

The following favorable reports of nominations were submitted:

By Mr. WALSH, from the Committee on Naval Affairs:

Capt. Clifford E. Van Hook to be a rear admiral in the Navy for temporary service, to rank from the 28th day of November 1941.

By Mr. MCKELLAR, from the Committee on Post Offices and Post Roads:

Sundry postmasters.

The VICE PRESIDENT. If there be no further reports of committees, the clerk will state the nominations on the calendar.

DIPLOMATIC AND FOREIGN SERVICE

The legislative clerk read the nomination of Guy W. Ray to be consul.

The VICE PRESIDENT. Without objection, the nomination is confirmed.

POSTMASTERS

The legislative clerk read the nomination of R. Franklin Bogenrief to be postmaster at Hinton, Iowa.

The VICE PRESIDENT. Without objection, the nomination is confirmed.

The legislative clerk read the nomination of Anastatia E. Walsh to be postmaster at Larchwood, Iowa.

The VICE PRESIDENT. Without objection, the nomination is confirmed.

THE NAVY

The legislative clerk read the nomination of Monroe Kelly to be rear admiral.

The VICE PRESIDENT. Without objection, the nomination is confirmed.

THE MARINE CORPS

The legislative clerk read the nomination of John Marston to be major general.

The VICE PRESIDENT. Without objection, the nomination is confirmed.

The legislative clerk read the nomination of Alexander A. Vandegrift to be major general.

The VICE PRESIDENT. Without objection, the nomination is confirmed.

Mr. BARKLEY. Mr. President, I ask unanimous consent that the President be immediately notified of all nominations confirmed today.

The VICE PRESIDENT. Without objection, the President will be notified forthwith.

ARMY NOMINATIONS REPORTED AND CONFIRMED

Mr. CHANDLER. Mr. President, I report favorably from the Committee on Military Affairs a number of nominations in the Army. I have consulted the majority leader and the minority leader, and there is no objection to immediate consideration, and I therefore ask that the nominations be considered at this time.

The VICE PRESIDENT. Is there objection to immediate consideration? The Chair hears none, and the clerk will state the nominations.

The legislative clerk read the nomination of Brig. Gen. Dwight David Eisenhower to be major general.

The VICE PRESIDENT. Without objection, the nomination is confirmed.

The legislative clerk read the nomination of Thomas Troy Handy to be brigadier general.

The VICE PRESIDENT. Without objection, the nomination is confirmed.

The legislative clerk read the nomination of St. Clair Streett to be brigadier general.

The VICE PRESIDENT. Without objection, the nomination is confirmed.

The legislative clerk read the nomination of William Morris Hoge to be brigadier general.

The VICE PRESIDENT. Without objection, the nomination is confirmed.

The legislative clerk read the nomination of George Bowditch Hunter to be brigadier general.

The VICE PRESIDENT. Without objection, the nomination is confirmed.

The legislative clerk read the nomination of Arthur Bee McDaniel to be brigadier general.

The VICE PRESIDENT. Without objection, the nomination is confirmed.

Mr. CHANDLER. I ask unanimous consent that the President be immediately notified of these confirmations.

The VICE PRESIDENT. Is there objection? The Chair hears none, and the President will be notified forthwith.

ADJOURNMENT TO MONDAY

Mr. BARKLEY. As in legislative session, I move that the Senate adjourn until 12 o'clock noon Monday next.

The motion was agreed to; and (at 5 o'clock p. m.) the Senate adjourned until Monday, March 30, 1942, at 12 o'clock noon.

NOMINATIONS

Executive nominations received by the Senate March 27 (legislative day of March 5), 1942:

TEMPORARY APPOINTMENTS IN THE ARMY OF THE UNITED STATES

TO BE MAJOR GENERAL

Brig. Gen. Dwight David Eisenhower (lieutenant colonel, Infantry), Army of the United States.

TO BE BRIGADIER GENERAL

Col. Thomas Troy Handy (lieutenant colonel, Field Artillery), Army of the United States.

Col. St. Clair Streett (lieutenant colonel, Air Corps; temporary colonel, Air Corps), Army of the United States.

Col. William Morris Hoge (lieutenant colonel, Corps of Engineers), Army of the United States.

Col. George Bowditch Hunter, Cavalry.

Col. Arthur Bee McDaniel (lieutenant colonel, Air Corps; temporary colonel, Air Corps), Army of the United States.

CONFIRMATIONS

Executive nominations confirmed by the Senate March 27 (legislative day of March 5), 1942:

DIPLOMATIC AND FOREIGN SERVICE

Guy W Ray to be a consul of the United States of America.

TEMPORARY APPOINTMENTS IN THE ARMY OF THE UNITED STATES

TO BE MAJOR GENERAL

Dwight David Eisenhower

TO BE BRIGADIER GENERALS

Thomas Troy Handy
St. Clair Streett
William Morris Hoge
George Bowditch Hunter
Arthur Bee McDaniel

PROMOTION IN THE NAVY

Monroe Kelly to be rear admiral for temporary service.

MARINE CORPS

To be major generals for temporary service from March 20, 1942

John Marston
Alexander A. Vandegrift

POSTMASTERS

IOWA

R. Franklin Bogenrief, Hinton
Anastatia E. Walsh, Larchwood.

HOUSE OF REPRESENTATIVES

FRIDAY, MARCH 27, 1942

The House met at 11 o'clock a. m.

The Chaplain, Rev. James Shera Montgomery, D. D., offered the following prayer:

Our Father, we lift up our hearts to Thee; hear our prayer in Thy dwelling place, and when Thou hearest, forgive. Back of the call of the human soul is the King of Glory who came from the heights of an infinite throne to the crimson depths of the cross that He might put into our breasts the rhythm of unearthly peace. Enable us to touch even the rim of that other worldliness that breaks through the spirit of a narrow vision and gathers up our motives and endeavors and bears them to the throne of grace.

Oh, that the quiet, solemn influence of these days might inspire men to lay their ambitions, their opportunities, and the needs of their souls at the footstool of divine sovereignty. His profound grief burst from His lips as He looked tearfully upon the city that would soon be prostrated in the dust of the oppressor. O Thou who art clothed with the royalty of the eternities and waiting with matchless patience, lift us into the upper spaces of spiritual aspiration. At Thine altar may we rededicate ourselves to the loyal service of the Master who came to bind up the brokenhearted, to proclaim liberty to the captives, and to open the prison to them that are bound. O Thou chosen Son of the living God, fling Thy light across the soul of this sick world that it may turn to Thee, live like Thee, and work with Thee. In our blessed Redeemer's name. Amen.

The Journal of the proceedings of yesterday was read and approved.

MESSAGE FROM THE SENATE

A message from the Senate, by Mr. Frazier, its legislative clerk, announced that the Senate agrees to the reports of the committees of conference on the disagreeing votes of the two Houses on the amendments of the Senate to bills of the House of the following titles:

H. R. 5784. An act to consolidate the police and municipal courts of the District of Columbia, and for other purposes; and

H. R. 6005. An act to authorize cases under the Expediting Act of February 11, 1903, to be heard and determined by courts constituted in the same manner as courts constituted to hear and determine cases involving the constitutionality of acts of Congress.

EXTENSION OF REMARKS

Mr. FITZPATRICK. Mr. Speaker, I ask unanimous consent to extend my own remarks in the RECORD and include therein a copy of A Surgeon's Prayer in Wartime, by Col. John J. Moorehead, of the Army Medical Corps, written by him on Christmas night at the Tripler General Hospital in Honolulu.

The SPEAKER. Without objection, it is so ordered.

There was no objection.

Mr. BECKWORTH. Mr. Speaker, I have two requests: To revise and extend my remarks and to include some letters with reference to farm labor, and to extend my remarks with reference to the charging of fees by unions, and to include excerpts.

The SPEAKER. Without objection, it is so ordered.

There was no objection.

Mr. GIBSON. Mr. Speaker, I ask unanimous consent to extend my own remarks in the RECORD and to include therein a circular letter written by myself.

The SPEAKER. Without objection, it is so ordered.

There was no objection.

Mr. LUDLOW. I desire to submit two requests: First, to extend my own remarks in the RECORD and to include two resolutions by the Indianapolis Newspaper Guild; and, second, to extend my remarks and include a telegram from Katharine Hepburn, the movie actress.

The SPEAKER. Without objection, it is so ordered.

There was no objection.

WHERE IS THE MONEY GOING?

Mr. McGREGOR. Mr. Speaker, I ask unanimous consent to address the House for 1 minute.

The SPEAKER. Without objection, it is so ordered.

There was no objection.

Mr. McGREGOR. Mr. Speaker, in checking the record I find that in the first 263 days of the fiscal year 1941, up to March 20, the administration has spent $19,000,000,000, or an average of more than $70,000,000 per day, $2,916,666 per hour, $48,611 per minute. On March 20, 1942, expenditures were $138,000,000 per day, $5,149,200 per hour, $85,820 per minute.

If this money is for national defense and is spent wisely, the people will bear the burden without a murmur. But is it being spent wisely? Let us look at the record.

First. Excess profits on war contracts. Mr. W. S. Jack, president of Jack & Heintz, Inc., of Bedford, Ohio, makers of airplane parts, testified under oath that his company had paid out $600,000 in bonuses during last year. Adeline Bowman, secretary to the president of this company, testified that she had received in bonuses $18,295 for the first 10 weeks of this year. And all the money came from the Government.

Second. Nonessential expenditures: The records show that the Office of Civilian Defense has 69 sports coordinators to teach the people badminton, archery, billiards, code ball, miniature golf, marbles, bowling, bag punching, canoeing, and weight lifting.

In behalf of the people of the Seventeenth District of Ohio, I raise my voice in criticism and protest against this wasteful expenditure of money. Let us find out who is responsible for this waste and see that it is stopped immediately.

[Here the gavel fell.]

USE OF COPPER BY RURAL ELECTRIFICATION ADMINISTRATION

Mr. FADDIS. Mr. Speaker, I ask unanimous consent to address the House for 1 minute.

The SPEAKER. Without objection, it is so ordered.

There was no objection.

Mr. FADDIS. Mr. Speaker, on March 5, 1942, Special Committee No. 3 of the House Committee on Military Affairs published a report of its investigations regarding the R. E. A. and copper. This report raised somewhat of a storm of criticism at that time, but I rise now to call the attention of the House to the fact that Mr. Nelson has banned copper to the R. E. A. for the duration of the war, and has cut 3,200 tons from the allocated supplies. Mr. Speaker, I feel that the judgment of the committee has been vindicated in this respect.

[Here the gavel fell.]

SIXTH SUPPLEMENTAL DEFENSE APPROPRIATION BILL

Mr. CANNON of Missouri, from the Committee on Appropriations, reported the bill (H. R. 6868) making additional appropriations for the national defense for the fiscal year ending June 30, 1942, and for other purposes (Rept. 1976) which was read a first and second time and, with the accompanying papers, referred to the Committee of the Whole House on the state of the Union and ordered printed.

Mr. TABER. Mr. Speaker, I reserve all points of order against the bill.

TO INCREASE FLYING HOURS OF AIR PILOTS

The SPEAKER. The Chair recognizes the gentleman from North Carolina [Mr. BULWINKLE].

Mr. BULWINKLE. Mr. Speaker, by direction of the Committee on Interstate and Foreign Commerce I ask unanimous consent for the immediate consideration of the bill (H. R. 6799) to increase the monthly maximum number of flying hours of air pilots, as limited by the Civil Aeronautics Act of 1938, because of the military needs arising out of the present war.

The Clerk read the title of the bill.

The SPEAKER. Is there objection?

Mr. HALLECK. Mr. Speaker, reserving the right to object, I take it that the gentleman will make an explanation of the bill. There are a few suggestions that I would like to make in connection with it.

Mr. BULWINKLE. I will be glad to make an explanation.

The facts are these. There are a number of pilots on the civil aviation lines and the War Department is desirous of having these pilots or some of them for ferrying planes and for other purposes; therefore in order to do that without detriment to the service, the number of flying hours is increased from 85 to 100 a month. That will release, I think, about 240 pilots.